TRANSCRIPT OF RECORD

FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 694

695

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

In Four Volumes

VOLUME I

(Pages 1 to 336, inclusive)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

Transcript of Record
In Three Volumes
Volume I
Pages 1 to 336

Upon Petition for Review, and Petition to Enforce Order of the National Labor Relations Board.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer of N.L.R.B. to Petition for Review of and to Set Aside Its Order and Request for Enforcement of said Order 134

Answer of Petitioner and Defendant in Intervention, Colgate-Palmolive-Peet Company, a Corporation, to Complaint in Intervention of International Chemical Workers Union, A.F.L., et al., Plaintiffs in Intervention ... 157

Answer of Respondent, Colgate-Palmolive-Peet Company 10

Appearances 95

Certificate of Board 89, 94

Certificate of the N.L.R.B. 86

Charge 92

Chronology of Facts 69

Complaint 4

Complaint in Intervention 145

Complaint in Intervention of Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union (C.I.O.) 151

Conclusions of Law 66

Decision and Order 68

INDEX PAGE

Employees' Welfare Association 116

Findings of Fact 89

First Amended Charge 22

Intermediate Report 18

Order Denying Motion 85

Order Permitting Intervention 143

Order Regarding National Labor Relations Act 80, 136

Petition for Review of Order of N.L.R.B. 101

Proceedings 165, 616, 877, 924

Recommendations 67

Statement of Points Constituting Errors in Fact and in Law in Rulings and Decision of the Board Relied Upon by Petitioner Herein 126

Second Amended Charge 1

Exhibits, Intervener's:

No. 1—Letter dated 7/28/45 to Frank Marshall from Paul Heide 847

No. 2—Address by E. H. Thompson Reporting Secretary 848

No. 3—Minutes of Meeting, 7/31/45 850

No. 4—Letter Dated 7/31/45 to Harold Lonnberg from Paul Heide 852

No. 5—Declaration of Principles 853

INDEX PAGE

Exhibits, Intervener's—(Cont'd):

No. 6—Decision of Trial Committee 856

No. 7—Decision of Trial Committee 867

No. 8—Proceedings Before Warehouse Union 877

Witnesses, Plaintiff:

Duarte, Charles
—direct 886

Gleichman, Hack
—direct 909
—cross 958

Gonick, Louis
—direct 900, 942

Goulart, Pauline
—direct 920

Grube, Charles
—direct 914

Leacock, Charles W.
—direct 918

No. 9—Proceedings Before Warehouse Union 923

Witnesses, Defendant:

Hixon, Glen
—direct 969

INDEX PAGE

Exhibits, Intervener's—(Cont'd):

Witnesses, Plaintiff:

Gleichman, Hack
—direct 956, 964, 976
—cross 958, 979

Grube, Charles
—direct 962, 964

Leacock, Charles W.
—direct 965

Squires, George
—direct 959, 965

Exhibits, N.L.R.B.

No. 3—Letter Dated 7/30/45 to Colgate-Palmolive-Peet Company from Paul Heide 784

No. 4—Pamphlet 785

No. 5—Telegram Dated 7/30/45 to International Warehouse Union 6, from Employees' Welfare Association 786

No. 6—Telegram Dated 7/30/45 to Bert Railey from Employees' Welfare Association 786

No. 7—Agreement of Colgate-Palmolive-Peet Company and Warehouse Union, Local 1-6 787

No. 8—Pamphlet 789

No. 9—Letter Dated 7/31/45 to Mr. Lincoln Olsen from Paul Heide 791

INDEX PAGE

Exhibits, N.L.R.B.—(Cont'd):

No. 10—Letter Dated 9/1/45 to Colgate-Palmolive-Peet Company from Paul Heide 792

No. 11—Letter Dated 7/30/45 to Mr. William Sherman from Paul Heide 793

No. 12—Letter Dated 8/22/45 to Members of Warehouse Union, Local 6, from Warehouse Union, Local 6, I.L.W.U. .. 798

No. 14—Decision and Direction of Election 799

No. 15—Statement of Employees' Seniority and Position 806

Exhibits, Respondent:

No. 1—Progress Report Dated 8/6/45 ... 808

No. 2—Progress Report Dated 8/7/45 ... 809

No. 3—Progress Report Dated 8/10/45 .. 812

No. 4—Bulletin Dated 9/12/45 814

No. 5—Bulletin, Progress Report Dated 9/15/45 817

No. 6—Bulletin, Progress Report Dated 9/18/45 819

No. 7—Bulletin, Progress Report Dated 9/27/45 822

No. 8—Bulletin, Progress Report Dated 9/29/45 825

INDEX PAGE

Exhibits, Respondent—(Cont'd):

No. 9—Bulletin, Progress Report Dated 10/9/45 826

No. 10—Bulletin, Progress Report Dated 10/9/45 827

No. 11—Bulletin, Progress Report Dated 10/11/45 831

No. 12—Bulletin, Progress Report Dated 10/12/45 835

No. 13—Bulletin, Progress Report Dated 10/12/45 837

No. 14—Bulletin, Progress Report Dated 10/15/45 841

No. 15—Sample Ballot 845

No. 16—Letter Dated 7/31/45 to Colgate-Palmolive-Peet Company from Paul Heide 847

Witnesses, N.L.R.B.

Altman, Clifford A.

—direct 666

—cross 686

—redirect 700

—recross 703

INDEX PAGE

Witnesses, N.L.R.B.—(Cont'd):

Carter, Cecil R.
—direct 704
—cross 713
—redirect 714
—recross 715

Gilbert, Rose
—direct 647

Howard, William C.
—direct 618
—cross 624

Lee, Alden
—direct 608
—cross 610

Lonnberg, Harold R.
—direct 338
—cross 353
—redirect 368, 373
—recross 369, 374

Luchsinger, David
—direct 614
—cross 614

INDEX PAGE

Witnesses, N.L.R.B.—(Cont'd):

Marshall, Frank
—direct 185
—cross 212
—redirect 249

Navarro, Edward
—direct 641
—cross 643
—redirect 645

Olsen, Lincoln Park
—direct 259
—cross 269
—redirect 283

Paige, Ina Mae
—direct 602
—cross 607

Periera, Catano
—direct 596
—cross 598

Richmond, L. Franklin
—direct 629
—cross 635

INDEX PAGE

Witnesses, N.L.R.B.—(Cont'd):

Sherman, William
—direct 376
—cross 382
—redirect 595
—recross 596

Smith, Harry A.
—direct 285

Stanberry, Don E.
—direct 716
—cross 744
—redirect 762
—recross 771

Wood, Charles
—direct 180, 720
—cross 185
—redirect 185

Zulaica, Albert
—direct 297
—cross 327
—redirect 335

INDEX PAGE

Proceedings in U.S.C.A., Ninth Circuit 989
Order of submission 989
Order directing filing of opinion and decree 990
Opinion, Healy, J. 990
Decree 993
Order denying petition for rehearing 997
Clerk's certificate 998
Order allowing certiorari 999

BOARD'S EXHIBIT No. 1(a)

United States of America
Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1372

In the Matter of—

COLGATE-PALMOLIVE-PEET COMPANY

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet Company at Berkeley, California, employing 350 workers in Soap manufacture, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Clyde W. Haynes, July 30, 1945
David Lucksinger, July 30, 1945
Frank Marshall, July 30, 1945

Sanford Moreau, July 30, 1945
Harry A. Smith, July 30, 1945
Edwin Thompson, July 31, 1945
Harold Lonnberg, July 31, 1945
Lincoln Olsen, July 31, 1945
William Sherman, July 31, 1945
Calixto Rigo, August 30, 1945
Thomas Azevedo, August 30, 1945
Henry Hellbaum, August 30, 1945
Robert Ashworth, August 30, 1945
Manuel Munoz, August 30, 1945
Nick Tate, August 30, 1945
Glenn Hixson, September 1, 1945
Vincent Barboni, September 1, 1945
Martin Heppeler, September 1, 1945
Albert Zulaica, September 1, 1945
Ann Cerrato, September 1, 1945
Ophelia Reyes, September 1, 1945
Sebastian Ramirez, September 1, 1945
Alden Lee, September 1, 1945
Terry Anderson, September 1, 1945
William C. Howard, September 1, 1945
Kay Norris, September 1, 1945
Ina Mae Paige, September 1, 1945
Felix Denkowski, September 1, 1945
Manuel Souza, September 1, 1945
Henry Gianarelli, September 1, 1945
Caetano Perriera, September 1, 1945
Rose Ros, September 1, 1945
Genevieve Young, September 1, 1945
Frank Richmond, September 5, 1945

Manuel Allegre, September 7, 1945
John Perucca, September 7, 1945
Edward Navarro, September 11, 1945
Rose Gilbert, September 13, 1945

because of their activity in forming Colgate-Palmolive-Peet Company Employees Welfare Association, a labor organization, because of their collective action in presenting grievances to the Company, because of their membership in and activities in behalf of International Chemical Workers Union, A.F.L., a labor organization or because of their refusal to join Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union, C.I.O., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above named employees in violation of Section 8, subsection (3) of said Act.

By the acts set forth in the paragraph above and by threatening to discharge employees because of their membership in or activity in behalf of International Chemical Workers Union, A.F.L., and by other acts and statements, it, by its officers, agents and employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subsection (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organizaion.)

INTERNATIONAL CHEMICAL UNION, A.F.L.
TOBRINER & LAZARUS.
/s/ MATHEW O. TOBRINER,
By /s/ JONATHAN H. ROWELL,
Attorney.

Subscribed and sworn to before me this 18th day of January, 1946, at San Francisco, California.

[Seal] /s/ ALFRED I. MARTIN,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires May 18th, 1946.

Dated Filed: January 18, 1946.

BOARD'S EXHIBIT No. 1(b)

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Chemical Workers Union, AFL, that Colgate-Palmolive-Peet Company, herein called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 49 Stat. 449, herein

called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

Respondent is, and at all times herein mentioned has been, a Delaware corporation with its central office in Jersey City, New Jersey. Respondent operates plants in various States of the United States, including a plant in Berkeley, California, where it is engaged in the manufacture, sale, and distribution of soap, soap products, glycerine, and related products.

II.

Respondent, in the course and conduct of its business in Berkeley, California, causes, and continuously has caused, a substantial amount of machinery, raw materials and supplies, to be purchased and shipped from points in the United States outside the State of California through channels of interstate commerce to Berkeley, California, and causes, and continuously has caused, a substantial amount of the products manufactured at its Berkeley, California, plant to be shipped to points outside the State of California through channels of interstate commerce.

III.

International Chemical Workers Union, herein called the Union, affiliated with the American Fed-

eration of Labor, and Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, herein called the ILWU, affiliated with the Congress of Industrial Organizations, are, and at all times herein alleged were labor organizations within the meaning of Section 2, subsection (5) of the Act.

Colgate-Palmolive-Peet Company Employees' Welfare Association, herein called the Association, during all times pertinent herein was a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

In a proceeding under Section 9(c) of the Act, a petition in Case No. 20-R-1486 was filed on August 3, 1945, with the Regional Office of the Board in San Francisco, California, requesting on behalf of the Union an investigation and certification of representatives for employees of respondent at the Berkeley plant. Notice of Hearing on the petition was issued August 14, 1945. Hearing was held on August 22, 1945, and Decision and Direction of Election was issued by the Board on September 26, 1945.

V.

Respondent, through its officers, agents, and employees, from about July 30, 1945, to the date of issuance of this Complaint has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by:

(1) Discharging and threatening to discharge employees because of their membership

in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondents bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance.

VI.

Respondent by its officers, agents, and employees, on or about July 30, 1945, discharged Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry A. Smith, and on or about July 31, 1945, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, because of their activity in forming the Association, their attempts to substitute the Association for the ILWU as bargaining representative of respondent's employees, and because of their collective activity on behalf of respondent's employees. At all times since the dates mentioned and particularly on or

about August 17, 1945, the respondent refused and now refuses to reemploy the above-named employees because of their activities as stated, and because of their membership in and activity in behalf of the Union.

Respondent by its officers, agents, and employees on or about the dates shown discharged the following-named employees, and at all times since has refused and now refuses to reemploy them, because of their membership in and activity in behalf of the Union and the Association:

August 30, 1945—Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, Nick Tate.

September 1, 1945—Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William C. Howard, Kay Norris, Ina Mae Paige, Caetano Perreira, Rose Ros, Genevieve Young.

September 5, 1945—Frank Richmond.

September 7, 1945—Manuel Allegre.

September 7, 1945—John Perucca.

September 11, 1945—Edward Novarro.

September 13, 1945—Rose Gilbert.

VII.

By the acts described in Paragraph VI, above, respondent has discriminated and is discriminating in regard to the hire and tenure of employment of the

individuals named therein, thereby discouraging membership in the Union and the Association and thereby encouraging membership in the ILWU, and thereby did engage in and thereby is engaging in, unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

VIII.

By the acts described in Paragraphs V and VI, above, and by each of them, respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby did engage in and thereby is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

IX.

The activities of the respondent described in Paragraphs V, VI, VII, and VIII, occurring in connection with the operations of the respondent described in Paragraphs I and II, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The acts of the respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 18th day of January, 1946, issues its Complaint against Colgate-Palmolive-Peet Company, a corporation, respondent herein.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National Labor Relations Board,
Twentieth Region.

BOARD'S EXHIBIT No. 1(g)

[Title of Board and Cause.]

ANSWER OF RESPONDENT, COLGATE-PALMOLIVE-PEET COMPANY

In answering to the complain in the above-entitled matter, the respondent, Colgate-Palmolive-Peet Company, admits, denies and avers as follows:

1. Answering paragraphs I, II, III and IV, respondent admits the allegations contained in said paragraphs I, II, III and V.

2. Answering paragraph V, subdivisions 1), 2), 3), 4) and 5) thereof, this respondent denies, generally and specifically, each and every, all and singular, the allegations contained in said paragraph V, subdivisions 1), 2), 3), 4), and 5) thereof.

3. Further answering said paragraph V with specific reference to subdivisions 2) and 4), respondent avers that literature and posters, notices and statements emanating from International Chemical Workers Union, Colgate-Palmolive-Peet Company Employees' Welfare Association (International

Chemical Workers Union and said Colgate-Palmolive-Peet Company Employees' Welfare Association are hereinafter referred to collectively as the "Union"), and International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "I.L.W.U.") were at all times mentioned in said complaint distributed to respondent's employees at the entrance of its Berkeley plant and distributed, circulated and sometimes posted in said plant by the respective adherents and partisans of said Union and said I.L.W.U. but without the consent or permission of respondent, and in this connection respondent avers that it was advised and is now advised by counsel that it would not and cannot interfere with the right of adherents and partisans of either the I.L.W.U. and the Union to express their opinions and give notice of what they believed to be their legal rights in the controversy between said I.L.W.U. and said Union, and that for this reason respondent did not at any time, expressly or otherwise, forbid or permit the circulation, distribution and posting of said literature, posters, notices and statements emanating from said I.L.W.U. and said Union.

4. Answering paragraph VI of said complaint, respondent denies, generally and specifically, each and every, all and singular, the allegations contained in paragraph VI.

5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been

and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

> "Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove prescribed. In the hiring of new help for the warehouses, they shall be hired through te offices of the Warehouse Union, Local 1-6, I.L.W.U."

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said

persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good stand-

ing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros, and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the War, in violation of said I.L.W.U. wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation for one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay

Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U.

8. Answering paragraphs VIII, IX and X of said complaint, respondent denies, generally and specifically, each and every, all and singular the allegations contained in said paragraphs VIII, IX and X of said complaint.

Wherefore, respondent, Colgate-Palmolive-Peet Company, respectfully prays that the complaint herein be dismissed.

COLGATE-PALMOLIVE-
PEET COMPANY.

By .....,
Vice President.

Postoffice address of respondent:
800 Carleton Street
Station A
Berkeley, California.

BARTLEY C. CRUM and
R. J. HECHT,
2002 Russ Building,
San Francisco 4, California,
Attorneys for Respondent.

State of California,
City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says that he is a vice president and managing officer of the Berkeley, California, plant of the respondent, Colgate-Palmolive-Peet Company, and makes this affidavit on behalf of said respondent, being authorized so to do;

That he has read the above and foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be averred upon information and belief and as to those matters, he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 31st day of January, 1946.

[Seal] /s/ MARIE H. STANLEY,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires November 20, 1947.

Received Jan. 31, 1946.

United States of America

Before the National Labor Relations Board

Trial Examining Division

Washington, D. C.

Case No. 20-R-1486

In the Matter of

COLGATE-PALMOLIVE-PEET COMPANY

and

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. OF L.

Case No. 20-C-1372

COLGATE-PALMOLIVE-PEET COMPANY

and

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. OF L.

Mr. Wallace E. Royster, for the Board.

Messrs. R. J. Hecht and Bartley C. Crum, of San Francisco, Calif., for the respondent.

Messrs. Matthew O. Tobriner and Jonathan H. Rowell, of San Francisco, Calif., for the A. F. of L.

Gladstein, Anderson, Resner, Sawyer & Edises, of San Francisco, Calif., by Bertram Edises, for the C.I.O.

Intermediate Report

Statement of the Case

On August 3, 1945, International Chemical Workers Union, A.F. of L., herein called the A.F. of L., filed with the Board's Regional Director for the Twentieth Region (San Francisco, California), a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of employees of Colgate-Palmolive-Peet Company, herein called the respondent, at its Berkeley, California, plant and requesting an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A hearing on the petition was held on August 22, 1945. On September 26, the Board issued its decision and directed that an election by secret ballot be held to determine whether certain of the respondent's employees desired to be represented for the purpose of collective bargaining by the A.F. of L., by Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, herein called the C.I.O., or by neither. The election was held on October 16, and was won by the C.I.O.[1] On October

---

[1]The results were as follows:

Approximate number of eligible voters	390
Void ballots	6
Votes cast for A.F. of L.	126
Votes cast for C.I.O.	181
Votes cast against participating unions	1
Valid votes counted	308
Challenged ballots	44
Valid votes counted plus challenged ballots	352

25, the A.F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C.I.O. be certified as the bargaining representative of the respondent's employees in an appropriate unit. The A.F. of L. filed exceptions to the Regional Director's report.

Meanwhile, on August 14, 1945, the A.F. of L. filed a charge; on October 10, 1945, an amended charge; and on January 16 a second amended charge, of unfair labor practices, and on the last date the Board, by its Regional Director, issued a complaint alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent, the A.F. of L., and the C.I.O.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent from about July 30, 1945, to the date of the complaint, (1) threatened to discharge employees because of their membership in the A.F. of L.; removed notices of the A.F. of L. from the respondent's bulletin boards while not disturbing matter posted by the C.I.O.; refused A.F. of L. representatives access to the respondent's plant, while permitting it to C.I.O. representatives permitted the C.I.O. to post on the respondent's bulletin boards statements threatening adherents of the A.F. of L. with discharge; and kept meetings of the A.F. of L. under surveillance; and (2) on or about July 30,

1945, discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith; on or about July 31, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman; on or about August 30, 1945, discharged Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate; on or about September 1, discharged Glenn Hixson, Vincente Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, and Genevieve Young; and discharged Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Novarro on September 11, and Rose Gilbert on September 13, and thereafter refused to employ any of these employees, because of their membership in and activity on behalf of the A.F. of L. and on behalf of Colgate-Palmolive-Peet Company Employees's Welfare Association, herein called the Association.

On February 4, 1946, the respondent filed its answer admitting some of the allegations of the complaint, but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the respondent pleaded the existence of a closed-shop contract with the C.I.O., and asserted that it discharged the above named employees because of the representation of the C.I.O. that they were not members in good standing of that organization.

Pursuant to notice, a hearing was held from February 4 to 8, 1946, at San Francisco, California, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. Upon the opening of the hearing, the C.I.O. made a motion to intervene, which the undersigned granted. The Board, the respondent, the A.F. of L. and the C.I.O. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

Upon the conclusion of the Board's case, counsel for the respondent made a motion, in which he was joined by counsel for the C.I.O., to dismiss the complaint. The undersigned denied this motion except as to those allegations of the complaint which alleged that the respondent removed notices of the A.F. of L. from the respondent's bulletin boards, that it kept meetings of the A.F. of L. under surveillance, and that it discriminatorily discharged Rose Gilbert. In these respects the motion was granted. At the conclusion of the hearing, the motion to dismiss the complaint was renewed. The undersigned reserved ruling on this motion, which is disposed of by the recommendations hereinafter made. He granted a motion by counsel for the Board to conform the pleadings to the proof in formal matters.

The parties were advised that they might argue orally before the Trial Examiner, and might file briefs with the Trial Examiner by February 22,

1946. Subsequently, this time was extended to March 8. Counsel for the Board argued orally. All the parties filed briefs.

On February 21, 1946, the Board directed a hearing on the A.F. of L.'s objections to the election, and ordered that the representation case be consolidated with the complaint case. On March 8, 1946, the parties entered into a stipulation in which they waived any further hearing in the representation case, and agreed that the record in the complaint case might be used in determining the issues raised by the objections to the election.

Upon the entire record in the case, and from his observations of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas; and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin. During the year 1944, the gross sale of the respondent at its Berkeley plant, the only plant involved in this proceeding, were in excess of $1,000,000. The total sales to customers located outside the State of California amounted to more than 25 per cent of this amount. During the same period raw materials having a

value in excess of $1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from sources outside the State of California. The respondent admits that it is engaged in commerce within the meaning of the Act.

On July 30, 1945, at or about the beginning of the series of events which formed the subject matter of the hearing, the respondent employed at its Berkeley plant approximately 313 non-supervisory employees.

II. The Labor Organizations Involved

International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, are labor organizations admitting employees of the respondent to membership.

Colgate-Palmolive-Peet Employees' Welfare Association, herein called the Association, was an unaffiliated labor organization admitting employees of the respondent to membership.

III. The Unfair Labor Practices

A. The discharges; other alleged acts of interference, restraint and coercion.

1. The discharges in July.

The C.I.O has represented the respondent's employees' since 1938. On July 9, 1941, it entered into a contract with the respondent which, in addition to establishing the wages, hours, and other working

conditions of the employees covered by it, granted the C.I.O. a closed shop.[2] The contract was of indefinite duration, terminable upon 30 days notice by either party.[3] From time to time during the life

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[2]This provision reads as follows:

"Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed. In the hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U."

[3]The provisions relating to the life of the contract are as follows:

"Section 18. Future Changes. The above constitutes an agreement between the Company and its employees, represented by the International Longshoremen's and Warehouse men's Union, Local 1-6, and shall remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives.

"Thirty (30) days notice will be required before the adoption of any change suggested by either the employees or the Company and no change of any sort will be made without col-

of the contract it was amended by various supplemental agreements, the last dated July 24, 1945, when the contract was extended pending approval by the War Labor Board of certain provisions of a new contract agreed upon by the parties.[4]

It is clear from the record that there had been for some time prior to the events hereinafter related a considerable dissatisfaction with their bargaining agent among the respondent's employees, as well as some friction between the C.I.O. plant stewards, five in number, and the officers of the I.L.W.U. The origin of this dissatisfaction and friction are less clear. However, some time in July, according

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lective agreement to it having been arrived at between the Company and the representatives of the employees. If and when such changes are found necessary they will be made with due regard for the mutual rights, privileges and well being of the employees and the Company."

[4]The extension agreement reads:

Memorandum of Agreement

"It is hereby agreed that certain contract dated July 9, 1941, by and between Warehouse Union, Local 6, I.L.W.U., and Colgate, Palmolive Peet Company, shall remain in full force and effect, ending the disposition of those provisions which apply to the following:

Shift differentials
Wage rates for women workers
Sick leave

and upon which agreement has been reached by the parties hereto, subject to approval of the Tenth Regional War Labor Board."

to the testimony of Frank Marshall, one of the five stewards, and former chairman of the Steward's Council,[5] he and others established contact with District 50 of the United Mine Workers of America and the matter of the affiliation of the respondent's employees with that organization was discussed. On July 26 a group of dissident members of the C.I.O. held a dinner meeting at a local cafe where they discussed severance of their relationship with the C.I.O., and the formation of the Association as an organizing committee to bridge the gap between the C.I.O. and such new affiliation as might be determined upon. This meeting was attended by approximately 30 union members, including the 5 stewards, namely, Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith, and including Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, four other employees who came to figure prominently in the events hereinafter related. A decision was made at this meeting to call an open meeting of the respondent's employees for July 30, for the purpose of presenting a resolution withdrawing from the C.I.O.

It was stipulated by the parties, and the undersigned finds, that the respondent had no knowledge of the July 26 meeting.

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[5]Local 6 admitted to membership employees of other employers, principally in the warehousing industry. In those plants in which Local 6 had contracts, a steward representative was chosen to sit with stewards from other plants on the Steward's Council.

On July 28, the following notice was posted on the three bulletin boards in the plant:

> Notice of Meeting
>
> Special Meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945.

This notice was observed during the day of July 28, by Clifford Altman, plant superintendent, who, late in the afternoon, reported it to Charles Wood, in charge of the respondent's labor relations. Altman testified that the notice was meaningless to him. Wood testified that he concluded merely that some sort of a welfare organization was being formed, perhaps one with facilities for extending credit to employees. The undersigned credits the testimony of Altman and Wood in this respect, and concludes that the respondent was not aware at this time that some of its employees were taking steps to form another labor organization and change their union affiliation. During the afternoon of July 30, a group of four officers of the C.I.O., headed by Paul Heide, vice-president, called at Altman's office and handed him a letter, in substance as follows:

> This is to notify you that charges have been preferred by this Union against the following employees of your Company, and that they have been suspended from membership of this organization pending a trial as provided for in

the Constitution of our local Union: Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith.

We, therefore, respectfully request that the above-named employees of your Company be immediately removed from the job until such time as the charges against them have been determined by this organization.

Altman, when he had finished reading the letter, showed it to B. W. Railey, the respondent's vice-president. A conversation ensued between Railey and the C. I. O. representatives, in Altman's office, testified to by Railey as follows:

Q. Will you relate to the best of your recollection the gist or substance of that conversation?

A. We told those people that this was—comes as a very great surprise to us, literally a bombshell. We knew nothing about what it was about, or any reason why these men should be suspended, and protested the thing because we told them they had been loyal employees as far as we were concerned and we had no charges against them. We were quickly reminded of our contract with the C.I.O. which specified—which carried a paragraph to the effect that all employees must be in good standing with the union to work at our plant.

* * * *

Q. Did any further conversations or discussions ensue after that?

A. These gentlemen that represented the C.I.O. told us that these men must be discon-

tinued immediately. They told us that they had sent a notice of their suspension to each man by registered mail, each man that was involved——.

* * * *

Q. (By Mr. Hecht): What else happened, Mr. Railey?

A. It was finally agreed that we should call these five men into the office . . .

Q. And what occurred then?

A. When they came to our office the C.I.O. officials handed each of them a carbon copy of a letter which they stated had been mailed to their homes. These gentlemen looked at the letters briefly and crushed them in their hands and stuck them in their pockets and walked out of the office.

Q. No conversation between the five men?

A. No conversation.

Q. Between the five men and the C.I.O. officials?

A. No.

Q. Any statement to you by these five men?

A. No.

The conference broke up when Railey told the five stewards that, inasmuch as he had been informed that they were not in good standing with the C.I.O., the respondent, under the terms of its closed shop contract, would have to let them go until their good standing was restored.

There is no substantial conflict between Railey's testimony and that of Altman with respect to the

conference in the latter's office. Nor do the accounts given by Marshall and Smith, the only two stewards who testified to the conference, differ in any material respect from those of Railey and Altman. It is noteworthy, and the undersigned finds, that neither during the conversations between Railey and Altman, on the one hand, and the four officials of the C.I.O., on the other, which took place previous to the calling in of the five stewards, nor during the conversation after the arrival of the stewards, was any mention made by anyone of any interest in or activity on behalf of any labor organization other than the C.I.O. In other words, no charge of "dual unionism" was made as a reason for demanding the discharge of the stewards, nor any accusation by any of the stewards that their discharge was motivated by their activity in obtaining another bargaining agent. Nor did the representatives of the C.I.O. explain in what respect the stewards had failed to maintain good standing in the C.I.O.; nor did Railey, Altman, or any of the stewards, inquire.[6]

Railey testified credibly as follows as to his lack of knowledge of the C.I.O.'s motivation in requesting the discharge:[7]

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[6]Smith testified that he did not engage in any conversation whatever with any of the representatives of the C.I.O., and Marshall's testimony fails to reveal any exchange of remarks with them.

[7]Wood's testimony to the affect that he made various but unsuccessful inquiries as to the meaning of the phrase "good standing," is hereinafter set forth in connection with subsequent discharges.

Q. Mr. Railey, did you make any attempt to find out the reason why the persons you have named were discharged?

* * * *

A. No.

Q. Did you ask the C.I.O. officials?

A. I don't recall ever asking them, but we were sure that that was—that they had the right to suspend anyone for many different reasons.

* * * *

Q. Did you during that period[8] get information from any source as to the nature of the controversy or what was said to be the nature of the controversy.

A. No.

Q. Did you read the Daily Press?

A. Yes.

Q. Was there anything in the Daily Press with reference to this controversy?

A. The racial question came up in the papers, many of the papers that I read.[9]

Between the break-up of the conference in Altman's office and the time of the meeting, C.I.O. representatives distributed throughout the plant copies of a bulletin in the following form:

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[8]The witness is testifying to the period between July 30 and August 2.

[9]Subsequently, on October 10, as the result of a union trial, Marshall and Sherman were found guilty, among other things, of "discrimination" against negro employees in the handling of grievances.

Attention !

All Warehouse Union Members:

An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

Warning ! ! !

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

GENERAL EXECUTIVE BOARD
Warehouse Union
Local #6, I.L.W.U.

Unlike the notice posted on July 28 announcing the meeting of the Association, this bulletin was not, so far as the record reveals, posted on any of the bulletin boards. There is no evidence that the bulletin came to the attention of any of the respondent's officials.

A substantial majority of the respondent's employees attended the meeting. During its course a motion was adopted to "withdraw from the C.I.O. and International Longshoremen's and Warehousemen's Union, District #1, Local 6," and to "form an Independent Union and seek affiliation with another International." The name "Employees Welfare Association" was adopted for the group.

Another motion was carried "to work tomorrow morning pending settlement of 5 Brother Shop Stewards laid off by management at request of I.L.W.U. officials. If shop stewards don't work, nobody works." Also adopted was a motion naming four employees, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, whose alleged discriminatory discharges are hereinafter discussed, as a negotiating committee to seek the reinstatement of the discharged stewards. It was voted that the stewards should continue to perform their functions until an election of officers could be held.[10]

It was stipulated, and the undersigned finds, that all the employees named in the complaint, with the exception of Rigo, Perreira, and Gilbert, attended this meeting and concurred in the action there taken.

Upon the close of the meeting the following telegram was sent to the C.I.O.:

> You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your union and being more than 50% of such employees by action taken for such purpose have and do hereby withdraw from your union, sever connections and refuse to be further bound by any

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[10]These findings are based upon the minutes of the meeting, in evidence.

of the laws rules or regulations of the constitution of I.L.W.U.

EMPLOYEES WELFARE
ASSOCIATION
By Negotiating Committee
E. H. Thompson
W. Sherman

and the following to the respondent:

You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.

EMPLOYEES WELFARE
ASSOCIATION
By Negotiating Committee
E H Thompson
William Sherman
H Lonnberg
L Olson

On the next day, July 31, Thompson, Lonnberg, Olsen and Sherman went to Altman's office and requested that the respondent reinstate the five stewards. Altman refused, stating that they had been suspended from membership by the C.I.O., and that the respondent had no choice, under its contract with the Union, but to suspend the stewards from their employment. From Altman's office the

committee went to Railey's office where it informed Railey of the dispatch of the telegram announcing that a majority of the employees had severed their membership in the C.I.O. The telegram arrived during the course of the conversation. At Railey's suggestion, C.I.O. officials, who were at the moment in Altman's office, were called in. Railey testified credibly as follows concerning the conversation which ensued:

> Q. Was this a free-for-all, or had either side spokesmen?
>
> A. I would say it was more or less a free-for-all. As I recall it, Mr. Lynden, the President of the C.I.O., and Mr. Sherman of this negotiating committee, did most of the talking.
>
> Q. Can you relate the gist of this conversation or talk between the two men?
>
> A. Well, to boil it down, the C.I.O. people told this negotiating committee that these people would have to stand trial on the charges against them, they could not work until those charges were disposed of, and they repeatedly reminded them . . . of the oaths that they took when they joined the C.I.O. and the consequence of a violation of those oaths, and assured them that they had done everything they could to get increases for the employees of the company, pointed out that the wages were frozen, nothing they could do about it . . . and at one stage of the meeting the negotiating committee walked out.

Q. About what time would you say that was?

A. Oh, I would guess it was probably about 9:30 in the morning.

Q. Did you continue the conference with the C.I.O. officials? A. Yes, we did.

Q. What was the subject of the conference?

A. We told them that our factory the afternoon before had been a very . . . in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done. And we asked them if they wouldn't leave the grounds, and they said, well, they would leave if this negotiating committee and the . . . or rather if the five stewards that had been suspended would leave. And we immediately went out to the factory and located the five stewards, and I believe all of the members of the negotiating committee were with them at the same time, told them the request that we had made of the C.I.O. officials, and told them we were going to make the same request of them because the C.I.O. officials certainly wouldn't leave if they didn't leave, and they finally agreed to leave.

Sometime during the day of July 31, representatives of the C.I.O. handed Altman a letter which was in substance as follows:

This is to notify you that the employees be-

low have been suspended from membership in this union and are no longer members in good standing.

Pending the determination of charges which have been filed against those persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your employ until such time as you receive word from us in regard to their status as members in this union.

ED THOMPSON.
H. LONNBERG.
LINCOLN OLSEN.
WILLIAM SHERMAN.

During the morning of July 31, representatives of the C.I.O. distributed copies of the following circular in the plant:

Attention All Members

I.L.W.U. #6

Employed at Colgate, Palmolive, Peet Company

Look Before You Leap

Because of a constant campaign of misinformation and falsehoods carried on by Sherman-Marshall-Lundeberg & Co., many otherwise reliable members of our union are being misled down a blind alley, and into action that can only result in losses and hardship for the membership involved. The unscrupulous people

who are attempting to promote strike action at this plant are traitors to our union membership, our flag and our country! All members who join with them are jeopardizing their own reputation, their union standing, their seniority and their jobs! Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work—and will resolve no issues—fancied or otherwise!

So that all members may understand the true situation, the following is a copy of agreement extending the provisions of the union contract, including the requirement that only members of Warehouse Union, Local #6, I.L.W.U., in good standing may be employed by the company. It will be enforced by the entire membership of our union, if it becomes necessary. (Underscoring in original).

The provisions of the extension agreement of July 24 were set forth at the bottom of the circular.

At noon on July 31, the four committeemen were active in rallying attendance at another meeting at Finnish Hall. At this meeting, similarly attended by a substantial majority of the respondent's employees, and presided over by Sherman, it was voted to "continue the meeting until shop stewards all returned to work." Railey, upon the invitation of the group, appeared and answered inquiries as to why the five stewards were not permitted to work. He stated, as he had previously done, to the stew-

ards themselves, that under the respondent's contract with the C.I.O. the respondent could employ only those who were members in good standing in that union. He declared that the question of their good standing was one between the Union and the individual member.

The meeting of July 31 was "recessed" until August 2, and for 2½ days most of the respondent's employees, including those named in the complaint, stayed away from work. Although the work stoppage was generally characterized as a "continuous meeting" by the employees involved, it is clear, and the undersigned finds, that it constituted a strike. It is equally obvious that the five stewards and the four committeemen were among the leaders of the strike. It was stipulated that those who took part in the strike did so with full knowledge of the C.I.O.'s no-strike pledge.[11]

During the interval between July 31 and August 3, the four committeemen, Thompson, Lonnberg, Olsen, and Sherman, received letters from the C.I.O. in the following form:

> In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for

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[11] This refers to the war-time pledge given by the I.L.W.U. and other affiliated C.I.O. unions.

the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights, privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, I.L.W.U.

At the meeting on August 2, also attended by a substantial majority of the employees, a resolution was adopted to dissolve the Association and to affiliate with the A. F. of L. Harvey Howard, A. F. of L. business agent, was authorized "to sign all necessary papers for the employees of Colgate-Palmolive-Peet Co. relative to wages, hours, and conditions of employment."[12] The strike was called off, and on August 3 all the respondent's employees excepting the five stewards and the four committeemen returned to work.

The committeemen were advised by Railey that their suspension had been requested by the C.I.O. and that it would be useless for them to report for work.

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[12]Quoted from the minutes of the meeting, which are in evidence.

2. Alleged assistance to the C.I.O. by the respondent during August

On August 3, the day on which the respondent's striking employees, with the exception of the discharged stewards and committeemen, returned to work, the A. F. of L. filed a petition for certification of representatives. The period following was utilized by adherents of both the C.I.O. and the A. F. of L. in campaigning for the union of their choice. Literature of both unions circulated freely, inside as well as outside the plant. A. F. of L. and C.I.O buttons were widely and openly worn. In various occasions, according to the credible testimony of witnesses called by the Board, employees were buttonholed on the job by C.I.O. stewards and their support for the C.I.O. solicited. There were occasions, revealed by the record, when employees whose loyalty to the C.I.O. was wavering were threatened by C.I.O. functionaries with discharge. The credible and uncontradicted testimony of Albert Zulaica, for example, concerning a conversation with Hack Gleichman,[13] a representative of the C.I.O., not in the respondent's employ, was to the following effect:

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[13]The C.I.O. appointed new stewards in place of the five discharged. Following their appointment, officials of the C.I.O., particularly Gleichman, appear to have been in the plant more frequently than previously. On the occasion in question Zulaica had been talking with Leacock, one of the newly appointed stewards, who accused him of passing out A. F. of L. literature in the plant, and Gleichman had interposed in the conversation.

Trial Examiner Ruckel: . . . What else did he say?

The Witness: Well, he say, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those A. F. of L. buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an A. F. of L. button."

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes. Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them," and I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the C.I.O."

No supervisory employee was present during the above conversation. Later, Zulaica asked Don Stanberry, production manager, for advice, and Stanberry said, according to Zulaica's version of the conversation, that if he would take off his A. F. of L. button he would have no trouble, but that if he wanted to belong to another union "they could never take that out of [his] heart." Stanberry testified that he told Zulaica only that the respondent had been compelled to discharge the five stewards and four committeemen because of its contract

with the C.I.O., but that Zulaica had as much of a right to express an opinion as any other employee, and that he should avoid a controversy with Steward Leacock.

Whether Zulaica's version of this conversation, or Stanberry's is taken as the more accurate, the undersigned does not find that Stanberry's remarks were intimidatory.

Further illustrative of activities of the C.I.O. stewards, which the Board contends constitute interference, restraint, and coercion by the respondent, and additionally illustrative of the extent to which A. F. of L. as well as C.I.O. adherents solicited in the plant, is the credited testimony of Kay Norris and Nick Tate. That of Norris was as follows:

> Q. Did you overhear any conversation that Mr. Gleichman may have had with anyone in the Toilet Department?
>
> A. Yes. He went around to numerous employees on our floor and warned them to take their buttons off or they would be suspended as . . . they would be in the same predicament as the Stewards were.
>
> * * * * * * *
>
> Q. Did you wear an A. F. of L. button at work? A. I did.
>
> Q. Did you wear it prominently on your clothes?
>
> A. I wore it at all times.
>
> Q. Did you pass out any A. F. of L. literature? A. I did.

Q. That was in the plant?
A. In the plant.
Q. Did you pass out A. F. of L. buttons?
A. I did, in the plant.

The testimony of Tate was as follows:

Q. All right. Now what was the conversation?

A. Well, Ed[14] told me he wanted to check my book, and I went in there and got my book, and I was just standing there and he said—he looked over to me and told—I don't know if he was talking to Hack (Gleichman), or the whole crowd, he said, "Check in Nick Tate's book, he was one of the A. F. of L. organizers."

* * * * * * *

Q. What was it again he said to you. Well? An A. F. of L. organizer?

A. He said, I was an A. F. of L. organizer.
Q. Were you? A. Sure I was.

The record contains instances other than those cited above of stewards and organizers of the C.I.O. in effect, threatening employees with loss of employment if they joined or assisted the A. F. of L. In no instance, however, so far as the record reveals, did any such conversation take place in the presence of any supervisory employee.[15]

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[14]Ed Bopp, one of the newly appointed stewards.

[15]In addition, at least one copy of a circular which contained, among other things, a threat that adherents of the A. F. of L. might lose their employment, was posted on one of the three bulletin boards. However, there is no evidence as to how long it remained posted, or that it came to the respondent's attention.

The hearing on the A. F. of L.'s petition was held on August 22. On August 25, there occurred an incident upon which is based the allegation of the complaint that the respondent refused A. F. of L. representatives access to the plant while granting it to C.I.O. representatives. On this date Harry Howard, a representative of the A. F. of L., in the company of Luchsinger and Lonnberg, entered the plant without permission for the purpose of soliciting membership in that organization. They remained there until discovered by Cecil Carter, the respondent's process supervisor. Upon Luchsinger's admitting that they did not have permission to be in the plant, Carter requested the group to leave. Howard protested the presence in the plant of Carlisle Harrison, a representative for the C.I.O. After Luchsinger and Howard had left, Carter investigated Harrison's presence and ascertained that he had been brought into the plant by Gleichman to assist the latter in checking the dues books of the employees, a practice which the respondent had for several years permitted the C.I.O.[16] After talking with Wood on the plant telephone, and on his instructions, Carter, according to his credible testimony, accompanied Gleichman and Harrison through the plant and saw that they did no "electioneering."

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[16] It was stipulated that the respondent, since the execution of the 1941 contract containing the closed-shop provision, has always permitted union representatives to collect dues in the plant.

The undersigned finds that the treatment accorded A. F. of L. representatives on this occasion, did not, in the circumstances, amount to interference, restraint, or coercion.

3. The discharges in late August and on September 1

Beginning on August 31, the respondent, upon the request of the C.I.O., discharged several groups of employees who participated in the strike on July 30. The first group, consisting of six employees,[17] were discharged on August 31, pursuant to a request from the C.I.O. and a charge that they were not members in good standing of the C.I.O. On September 1, the C.I.O. posted a number of its adherents at the plant gate and checked the dues books of the employees as they entered the plant. Later that day the respondent received a letter from the C.I.O., insubstance as follows:

> This is to notify you that the employees named below have been suspended from membership in this Union and are no longer members in good standing.
>
> Pending the determination of charges which have been filed against these persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your

[17]There employees were Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate.

employ until such time as you receive word from us in regard to their status as members in this Union.

Rose Ross	Martin Heppler
Esther Young	Bill Howard
Ina M. Paige	Glex Hixon
Ophelia Reyes	Alden Lee
Kay Norris	Al Barboni
Ann Cerrato	Felix Denkowski
Henry Giannarelli	A. L. Richards
Manuel Souza	Terry Anderson
Albert Zulaica	K. Periera
Mike Ramirez	

Railey called the designated employees to his office where, in the presence of Wood, Altman, Stanberry, and Carter, he read them the above letter and told them that they were suspended from their employment in conformity with the closed-shop provision of the 1941 contract. Several of the employees who were present testified that Railey added, in substance, that he had not wanted them to join a union and that now they must take the consequences, and that Wood said, in effect, that if the employees had "kept this about the A. F. of L. quiet," they would not have been discharged. Railey, Wood, Altman, Stanberry, and Carter testified either that Railey and Wood did not make the statement attributed to them, or that they did not hear them. The undersigned believes it improbable that either Railey or Wood made such statements and finds that they did not.

Wood testified that on several occasions he pressed

C.I.O. officials for clarification of the phrase "good standing" as used in connection with the union membership of these 18 employees and others previously discharged, and that he received no satisfactory explanation. In this connection he gave the following testimony credited by the undersigned:

Q. Did Mr. Gleichman give any reason for wanting to have you remove these men?

A. Well, he said they were in bad standing, that they were no good, and that they—a lot of them weren't up in their dues—In addition to that I think he said there were a large number that were not members of the union.

* * * * * * *

Q. When you called Paul Heide about this list of 18 did you ask him the reason why these men and women were being put in bad standing? A. I did.

Q. What answer did you get from Heide?

A. He said that they[18] had violated their oath, the constitution and by-laws and their oath of office, their office of—the oath they took upon initiation, excuse me.

* * * * * * *

Q. Well, did you make any further effort?

A. I made further ones, yes, and I made previous ones.

Q. And that is the most satisfactory answer you got?

* * * * * * *

[18]There is no evidence that the respondent had any knowledge of the provisions of the C.I.O.'s constitution or by-laws.

A. That is the only answer I ever got.

Q. All right. On September 1, 1945, or let us even carry it further, September 15, 1945, had you, Mr. Wood, formed any definite opinion for the reason why these men were being put in bad standing by the Union?

A. No, I hadn't. I was somewhat bewildered.

Q. What was the reason for your bewilderment?

A. Well, I didn't think it was only for union activities, or anti-union activities alone, because many people had not been disturbed that I had observed wearing buttons and passing out literature.

* * * * * * *

Q. (By Mr. Hecht) Did those persons, Mr. Wood, to whom you have reference, continue to wear the A. F. of L. buttons and pass out the A. F. of L. literature up to and including the date of the election?

A. They did, sir.

Q. Are those persons still in your employ?

A. They are.[19]

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[19]Altman testified credibly as follows concerning inquiries as to the nature of the C.I.O.'s complaints against those whose discharges were requested:

Q. (By Mr. Hecht): And did any conversations ensue between the persons assembled there?

* * * * * * *

A. ——Lynden said these men cited would have to stand trial, and if they were cleared of

4. Later discharges

Five other employees were discharged at intervals during the month of September,[20] in each case at the request of the C.I.O., made allegedly because of their failure to maintain membership in good standing. Each was given a letter by the C.I.O. advising him to that effect. The undersigned, on motion of the respondent, dismissed the complaint as to Rose Gilbert, one of these five employees, since it appeared from her own admission that although she came to work on August 21, and joined the A. F. of L. a few days later, she had not joined the C.I.O. by September 13. On this date according to her own testimony, when her discharge was requested, although Gleichman asked her to join the C.I.O., she replied that she was going to wait until "matters were settled." The C.I.O. requested her discharge the same day.

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the charges that had been made against them, why, they would be welcomed to return to work, and also the union said they would pay them for the time they lost if they proved that they were innocent.

Q. Did you inquire as to the nature of the charges made against these men?

A. Well, we did at various times ask what the charges were, and the reply was that they were not in good standing and they would have to stand trial.

Q. That is as much information as you got?

A. That is right.

[20]These were Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Novarro on September 11, and Rose Gilbert on September 13.

Richmond's uncontradicted and credited testimony concerning the circumstances surrounding his discharge was as follows:

> Q. All right. Well, now, let's have the conversation then that took place between Mr. Gleichman and you with no one else present?
>
> * * * * * * *
>
> A. I was walking across this floor, and I had my A. F. of L. button on. He spied the button, he walks over and he says, "What in the hell are you doing in here?" and I says, "I am working here," and he says, "How long have you been working?" I says, "About ten years." He says, "Did we see your book?" and I says, "You did." And he says, "Let me see it."
>
> And then is when I walked over to my boss.

Carlson, Richmond's foreman, assured the latter that Gleichman was entitled to see his dues book, whereupon Richmond procured it, and showed it to Gleichman. The following conversation ensued between Gleichman and Richmond, out of Carlson's hearing:

> Q. (Mr. Hecht): You said what?
>
> The Witness: I said, "I will go and get it." So I went and got the book, and I gave it to him and he just opened up the back of it and got the number. And he says, "1916, huh?" That is all. And I says, "Now I suppose

I will get one of your letters?" He says, "You will."

Q. (By Mr. Royster) And did you?

A. I did.

Edward Navarro came to work for the respondent in December 1944, as a machinist. At that time he was a member of a machinists' union affiliated with the C.I.O., and throughout his employment with the respondent maintained his membership in that organization, and did not join the I.L.W.U. His discharge was requested and effectuated on September 11.

Allegro and Perucca were discharged on September 7. Although the circumstances attending their discharge are not fully revealed by the record, it is clear that they were based upon their failure to maintain membership in good standing in the C.I.O.

Subsequent developments

All the employees named in the complaint were brought to trial before a trial board of the Union, the five stewards and four committeemen on October 3, and the others on December 17, 1945. None of the stewards or committeemen[21] appeared at the

[21]The stewards and committeemen were charged with and found guilty of violating the union constitution and bylaws, the stewards by reason of the following acts: (1) attacking and violating the "no discrimination" policy of the union; (2) using their positions to falsify the policy of the union and the status of the unions contract; (3) encouraging the non-payment of dues and non-attendance at union meetings; (4) failing to present grievances

trial, and all were expelled. Those tried on December 17, who included the employees discharged on or after August 31, were charged only with participation in a strike in violation of the C.I.O.'s no-strike pledge.[22] Of the group of 18 who were

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honestly; (5) refusing to post official C.I.O. notices; (6) conferring with enemies of the Union to destroy it.

The decision of the trial committee itemized its findings, in fact, as follows:

> "——For instance, they refused to put Section 10 of the Peets' contract into effect, which called for setting up stewards for each department. They refused to select a Chief Steward as required by the contract. They showed poor judgment in regard to what grievances to present to management. They pushed many phony grievances. ——It all amounts up in our opinion to sabotage of the steward's job.
>
> "The Union's political action program took a bad beating from the stewards. For instance, they refused to carry out the mandate of the union membership in regard to financial support for the National Citizens Political Action Committee. They sabotaged collection of funds for the defense of Harry Bridges, President of the I.L.W.U. They opposed the program for keeping out the Little Steel formula. They bucked the Union's program in regard to enforcing O.P.A. regulations."

The specific charges against the committeemen were for the most part similar to those lodged against the stewards. In addition, the committeemen were accused and found guilty of promoting and leading the strike of July 31, in violation of the C.I.O.'s no strike pledge.

[22] With the exception of the six discharged on August 31, who were also accused of offenses similar to those charged against the committeemen.

discharged on September 1, all who appeared at the trial were found guilty of participating in the strike, deprived of their seniority at the respondent's plant, and placed on probation for 1 year, during which time they were not to be eligible to hold a position of trust in the Union. They were, however, given the privilege of working out of the C.I.O.'s hiring hall and of obtaining employment in other plants under contract with the C.I.O.

The respondent was given copies of the trial committee's formal decision with respect to all these employees.

Concluding Findings

The Board and the A. F. of L. contend that the foregoing facts require a finding that the respondent discharged the employees named in the complaint in violation of the Act, and urge that the decisions of the Board in the Rutland Court[23] and Portland Lumber Mills,[24] cases are controlling.

It may be readily admitted that one of the reasons, if not the principal one, which motivated the C.I.O. in demanding the discharge of the five stewards and the four committeemen, was their activity in seeking to change the bargaining representative of the respondent's employees. The dinner meeting on July 28, and the open meeting on July 30, were the first steps to that end. Such

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[23]Rutland Court Owners, Inc., 44 N.L.R.B. 587 and 46 N.L.R.B. 1040.

[24]Portland Lumber Mills, 65 N.L.R.B. No. 1; 17 L.R.R. 614.

activity may be protected by the Act after a question of representation has arisen, or, as here, when the contract is of indefinite duration and has run for a year or more.[25] If the respondent knew that the only reason which prompted the C.I.O. was the "dual Unionism" of the employees in question, then its compliance with the C.I.O.'s request to discharge them was violative of the Act. This principle was established by the Board in the Rutland Court case where the Board pointed out that if the closed-shop proviso of the Act were to be interpreted so as to require an employer to discharge employees solely because they attempted to change their bargaining representative, the Union which obtained a closed-shop contract would tend to become self-perpetuating. Where the employer has lacked knowledge, as in the Diamond T case,[26] the Board has dismissed the complaint.

The undersigned finds the element of knowledge lacking in the instant case. Its absence is perhaps more apparent in connection with the five stewards than it is with respect to the other employees.[27] It

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[25]Cf. Southwestern Portland Cement Company, 65 N.L.R.B. No. 1 where such activity was held not protected by the Act when it occurred at a time when the contract had 8 months to run, and when the activity was designed to effect an immediate change in the bargaining representative.

[26]Diamnod T. Motor Car Co. 64 N.L.R.B. No. 205.

[27]It may be reasonably argued that the respondent's knowledge was immaterial in the case of the stewards, and that the Union would be justified in

is admitted that the respondent did not know of the dinner meeting on July 26, and the undersigned has found that the posted notice of the meeting of the Association on July 30 meant nothing to the respondent who was not then aware of any steps to change the union affiliation of its employees. Moreover, there was nothing in this notice to connect the stewards with the Association. There is no reason to doubt Railey's testimony that when, on July 30, the C.I.O. officials handed him a letter invoking the closed-shop provision of the 1941 contract with respect to the five stewards, the respondent was caught by surprise. Nor did the later conversation between representatives of the C.I.O. and the respondent, and the still later one between them and the five stwards, during which the latter were informed of their discharge, serve to enlighten the

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expelling and the respondent in discharging them even though their "bad standing" in the C.I.O. was founded on dual unionism alone. This view takes cognizance of the difference in the degree in loyalty owed by a functionary of a union and a rank and file member, and the strategic position which a steward or an officer occupies in the administration of a union. As has been found, the stewards here were charged and found guilty eventually by the C.I.O. of sabotaging the policies of the international organization. It may well be that if a steward or other functionary of a labor organization seeks to supplant that organization with a competing labor organization, he should first resign his office, and that if he does not, but engages in dual unionism, the first union may expel him even though by so doing it places him in the line of discharge by the employer.

respondent. During neither of these conversations was any accusation made by any of the stewards or by anyone else that the C.I.O.'s demand was based on any other than lawful grounds. It is true that Railey did not inquire as to the precise grounds; but he was not obligated to do so. When Wood and Altman, on subsequent occasions, inquired of C.I.O. representatives as to the nature of the charges against suspended union members, they were told merely that they were no longer in good standing.

Although the respondent's officials might have suspected that the stewards were interested in changing their union affiliation, there was no evidence or claim to this effect before them when the discharges were effectuated. On the contrary, during this period, Railey, according to his credible testimony, read in the papers that certain C.I.O. stewards were being accused of racial discrimination and inferred that this had something to do with their suspension from union membership.

The conclusion that the respondent was under no obligation to investigate the motives which prompted the C.I.O., or to analyze and weigh alternate or mixed motives in an endeavor to ascertain which were decisive and which were only contributory in impelling the C.I.O. to suspend certain of its members and to request their discharge, is hereinafter more fully discussed in connection with the discharges on July 31 of the four committeemen, and the still later discharges of other rank and file union members, as to whom, because of interven-

ing events, the respondent had more knowledge than it had on July 30 when it was compelled to take action with respect to the stewards.

The degree of knowledge which the respondent had at the time it separated the stewards from its employment appears to the undersigned as less than that which the employer had in the Diamond T case where, as the Board found, the employer knew that the employees in question were active on behalf of a rival union. In the instant case, there is no evidence that the respondent had such knowledge as to the stewards. It is agreed that it had no notice of the dinner meeting on July 28, and there is no evidence that it acquired any information as to the dual union activities of any employee between that time and the moment when, on July 30, the C.I.O. first invoked the contract.

Nor, so far as the record reveals, did the bulletin distributed by the C.I.O. on July 30, warning against attending the "illegal" meeting called for that day, come to the respondent's attention. While it is probable that the respondent's officers knew that a meeting was to take place after working hours on that day, apparently its first information as to its purpose was derived from the telegram dispatched upon the close of the meeting, signed by Thompson, Sherman, Lonnberg and Olsen, in the name of the Association. This telegram did more than reveal that a group of the respondent's employees were interested in a labor organization competing with the C.I.O. It announced that a majority of the employees considered themselves as "for-

mer members" of the C.I.O., who had "withdrawn and severed relations with" it.

Although the respondent appears not to have received this telegram prior to the arrival of Thompson, Sherman, Lonnberg, and Olsen, the four committeemen, in Railey's office the next day, they informed Railey of its contents. The respondent, therefore, must have viewed the committeemen as employees who, for whatever reason, had voluntarily quit the C.I.O. When the respondent shortly thereafter received a letter from that organization requesting that the employment of the committeemen be terminated, the respondent could not reasonably have concluded that the request was based only upon the committeemen's activity on behalf of the Association, and was uninfluenced by the announcement of their withdrawal from the C.I.O. Assuming, for the moment, that the respondent believed that both factors prompted the C.I.O.'s request, the undersigned knows of no feasible method by which the respondent could determine which factor was the motivating one in the C.I.O.'s decision to invoke the closed-shop provision of the contract.[28]

The meeting at noon on July 31, attended by Railey, and the ensuing strike for 2½ days, revealed

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[28]Or is the presence of an illegitimate motive alongside a legitimate one, sufficient, as the Board has frequently ruled where discharges absent a closed shop are concerned, to render a discharge violative of the Act? The undersigned does not believe that it is.

to the respondent the scope of the dissatisfaction with the C.I.O. Thereafter, the respondent was faced by two labor organizations, each contending for the allegiance of its employees. Proponents of each organization distributed literature openly in the plant, and wore buttons indicating the union of their choice. Statements of C.I.O. organizers to various employees, such as that of Gleichman to Zulaica, that those wearing A. F. of L. buttons could be "thrown out," serve to throw light on the motive of the C.I.O. in requesting the discharges. No such statements were made, however, in the presence of any supervisory employee.

The C.I.O. conducted dues checks on August 25 and September 1. On August 31, it requested that six employees be separated from their employment because of their failure to maintain membership in good standing in the contracting union. This request was followed on the next day by a similar one as to 18 other employees, and, finally, during the following week by demands as to 5 more. In each instance the C.I.O. stated only that the employees had been suspended from membership because they were no longer "in good standing." Wood's inquiries as to what was meant by "good standing" were little more successful in eliciting information than were similar inquiries by Altman. Wood was told, however, that some of the employees in question were behind in their dues and that others were not members of the union. As has been found, this

latter statement was true as to Gilbert and Navarro.[29]

The respondent knew on August 31 that many of its employees were dissatisfied with the C.I.O. and were actively promoting the A. F. of L., and that the question concerning representation was before the Board for decision. It knew that an election would in all likelihood be ordered, and that the C.I.O. would be in a favorite strategic position if employees adverse to it were removed from their employment and their places taken as of necessity they must be, by employees furnished through the C.I.O.'s hiring hall.[30]

The respondent knew all these things. On the other hand it could reasonably conclude that these employees had been among those participating in the strike on July 31 in violation of the C.I.O.'s war-time no-strike pledge[31] and it must have assumed that which was the case, that they had attended the meeting on July 30 when the telegram was dispatched informing the respondent that a number of employees had severed their connection with the C.I.O. Moreover, so far as the respond-

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[29]Navarro, however, as has been found, was a member of another C.I.O. Union.

[30]The number of employees in the unit increased from approximately 313 on July 31, to approximately 390 at the time of the election. The new employees, of course, were members of the C.I.O.

[31]There is evidence in the record that the strike was the only one participated in by members of the West Coast I.L.W.U. during the recent war.

ent was aware, there might have existed other reasons relating to the internal affairs of the Union, or pertaining to some element of its policy or program, which prompted the suspensions from membership. One such matter of union policy—the C.I.O.'s attitude toward racial discrimination, did come to Railey's attention through the newspapers.

Here, again, as in the case of the stewards and the committeemen, the respondent was under no duty to investigate to ascertain the real motive of the C.I.O. where there was evidence that conflicting motives existed. As the Board said in the Diamond T case:

> While the respondent knew of the activities of these employees on behalf of the Union during the pendency of a question concerning representation, it does not follow that the Independent was motivated by such activities and not by lawful considerations in demanding their discharge.

In the Diamond T case, the respondent did not have knowledge of any activity by the employees in question which might have prompted a demand for their discharge, other than their activity on behalf of the rival union. In the instant case, the respondent had knowledge of at least two other facts, one, participation by the employees in an unauthorized strike, and the other, the announcement of their withdrawal of union membership—either of which furnished a lawful basis for suspension by the Union.

That the contracting union might properly discipline members for participating in a strike called in violation of union poley, by suspending or expelling them, seems to the undersigned hardly open to question. A labor organization, no less than any other organization, cannot be denied the authority to compel compliance with the decisions of its membership. "Good standing" in an organization implies something more than the mere payment of dues.

It is sometimes difficult to determine where permissible activity on behalf of a rival organization carries over into such overt acts of sabotage or obstruction directed against the contracting union, as seriously to impair the labor government in the plant and to invoke the union's discipline. It is for this reason, perhaps, that unions ordinarily seek to prescribe any activity on behalf of another labor organization, and to stigmatize it as "dual unionism." When this attempted prescription during an appropriate period, however, enlists the knowing cooperation of the employer, with the consequence that the offending member is discharged and deprived of his livelihood, the Board has not hesitated to find a violation of the Act. In each such instance, however, the Board has required knowledge by the employer, derived from information in its possession at the time it effectuated the discharge. This information has heretofore been of such a na-

ture as not to require any interpretation of evidence, or any independent investigation on its part.[32]

The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint, and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C.I.O. and to have had access to the minutes and records of the meeting or meetings at which the Union's decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the

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[32]In the Rutland Court case, for example, the business agent of the A. F. of L., the contracting union, called the employees into the office of the employer where both the employer and the union agent pressed them to state to which labor organization they gave allegiance. When they answered that they preferred the C.I.O., the agent stated to the employer that the employees had "double crossed" him and forthwith replaced them by others. No reason other than their interest in the C.I.O. was alleged.

In Portland Lumber Mills, the dischargee showed the employer the formal charge against him which stated that he had given "aid and support to a dual organization."

operation of the Act. In any event, he has no means of compelling it.

The undersigned therefore finds that the respondent did not violate the Act by discharging the employees named in the complaint because of the suspension of their membership in the C.I.O., in view of the lawfully agreed requirement of membership in that organization as a condition of employment. Accordingly, the undersigned will recommend that the complaint herein be dismissed.

The Objections to the Election

The undersigned has found that the discharges of the employees named in the complaint did not constitute an unfair labor practice. He now finds that they do not afford a basis for setting aside the result of the election on October 16. It may be noted that none of the discharges took place after the Board's finding, on September 26, that a question of representation had arisen, and directing an election.

The undersigned has found that the respondent did not engage in any other act of interference, restraint, and coercion in violation of the Act. Although, as has been found, certain representatives of the C.I.O., without the knowledge of the respondent, in conversation with employees, threatened them with discharge if they persisted in activities in behalf of the A. F. of L., such statements seem to have had little, if any effect; and partisans of the A. F. of L. continued openly to wear A. F. of L. buttons and to distribute A. F.

of L. literature in the plant. Moreover, all such threats, so far as this record reveals, took place prior to the finding of the Board that a question concerning representation had arisen, and were fairly remote from the election in point of time. Although the Board has on occasion set aside the results of an election because of the conduct of one of the participating unions in which the employer did not participate and for which it was not responsible, the undersigned does not believe that the factual situation as revealed by this record warrants such a step here.

The undersigned will recommend that the objections to the election be overruled.

Upon the basis of the foregoing findings of fact and the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, are labor organizations, and Colgate-Palmolive-Peet Employees' Welfare Association, unaffiliated, was a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. The respondent has not engaged in any unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, the undersigned recommends that the complaint against the respondent, Colgate-Palmolive-Peet Company, San Francisco, California, be dismissed in its entirety.

The undersigned further recommends that the A. F. of L.'s objections to the election be overruled.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, request therefor must be made in

writing within ten (10) days from the date of the order transferring the case to the Board.

/s/ HORACE A. RUCKEL.
Trial Examiner.

Dated: March 27, 1945.

[Title of Board and Cause.]

DECISION AND ORDER

On March 27, 1946, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices affecting commerce alleged in the complaint, and that there was no sufficient basis for setting aside the result of the election previously held in Case No. 20-R-1486, and recommending that the complaint be dismissed and that the A. F. of L's objections to the election be overruled, as set forth in the copy of the Intermediate Report attached hereto.[1] Thereafter, the A. F. of L. and counsel for the Board each duly filed exceptions to the Intermediate Report and a supporting brief.

The Board has considered the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire

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[1]The Intermediate Report was inadvertently dated March 27, 1945.

record in the case, and hereby adopts the findings and conclusions of the Trial Examiner, only insofar as they are consistent with our Decision and Order herein.

CHRONOLOGY OF FACTS

On July 24, 1945, the respondent and the C.I.O. agreed in writing to extend a closed-shop contract made in 1941 and, in part, requiring C.I.O. membership in good standing as a condition of employment, pending decision by the Regional War Labor Board for the Tenth Region approving or disapproving certain contract changes. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the Act, which permits an employer to make a closed-shop contract with a bona fide majority union covering an appropriate unit.

On July 28, 1945, as the first open break between the C.I.O. and a large group of anti-C.I.O. employees spearheaded by the stewards, a notice was posted on the respondent's three bulletin boards announcing an open meeting of the "Employees Welfare Association" at the end of the afternoon shift on July 30 but containing no explanation of the named organization. The purpose of the meeting was for the employees to withdraw from the C.I.O. and to transfer to some other labor organization. The respondent must have learned of the purpose of the proposed meeting, or it would not have agreed to shut down the plant for about 2 hours so

that the employees on the night shift could attend.[2]

On July 30, 1945, the respondent discharged the first group of complainants, consisting of the five stewards and including Luchsinger, at the request of the C.I.O. and on the representation by the C.I.O. that the stewards were "suspended from membership" pending determination by the C.I.O. of unspecified "charges against them" which impaired their good standing. Immediately after the discharges, C.I.O. adherents distributed leaflets throughout the plant, warning the employees that they would jeopardize their employment by attending the "illegal" meeting of the Employees Welfare Association scheduled for later that afternoon or by otherwise violating the C.I.O's constitution or membership oath. A majority of the respondent's employees, including substantially all the complainants, nevertheless attended the meeting, during which time the respondent shut down its operations pursuant to the agreement set forth above. The meeting voted, apparently without dissent, to withdraw from the C.I.O., to form another labor organization and to go on strike at noon of the following day unless the respondent reinstated the five discharged stewards. A telegram was thereupon sent to the respondent, signed by a four-man negotiating committee appointed at the meeting, stating in part that a majority of the employees,

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[2]The record shows that complainants Luchsinger and Olsen secured Superintendent Altman's agreement to the shut-down.

being "former" C.I.O. members, "have withdrawn" from the C.I.O.

On the morning of July 31, 1945, the negotiating committee went to the respondent's office and interviewed Superintendent Altman and Vice President Railey in an attempt to get the discharged stewards reinstated, at the same time advising the respondent of the anti-C.I.O. telegram, which arrived during the interview. After the anti-C.I.O. purpose of the interview had become plain, Heide, a C.I.O. vice president, who was present, stated before Altman and Railey, admittedly management representatives, that the suspension notices of three of the four members of the negotiating committee were in the mail, asked the name of the fourth member, and upon learning that it was Olsen stated that he too would receive a suspension notice. Thus the respondent was in effect again informed that the C.I.O.'s motive was to remove the opposition. Later that morning, the C.I.O. distributed throughout the plant copies of another leaflet, again warning the employees that they might lose their jobs by assisting the C.I.O. "traitors." At about the same time, the C.I.O. advised the respondent that the four members of the negotiating committee had been suspended from membership pending determination of unspecified charges against them, and demanded their discharge.

At noon on July 31, 1945, the Employees Welfare Association held another meeting, likewise attended by a substantial majority of the respondent's employees, at which it was decided to "continue the

meeting" until the stewards were reinstated, although Vice President Railey was present on invitation to explain that the stewards could not be reinstated because of the closed-shop contract. For the next few days most of the respondent's employees, including all the complainants, stayed away from work because of the "continuous meeting," a stoppage which we find constituted a strike.

On August 2, 1945, the Employees Welfare Association held another meeting, at which it voted to affiliate with the A. F. of L. and to return to work.

On August 3, 1945, most of the respondent's employees, except the five stewards and the four committeemen, returned to work. The first group, consisting of the five stewards, had previously been discharged, and the second group, consisting of the four committeemen, did not return to work because they had been advised by Superintendent Altman that the respondent could not employ them in view of their suspension from membership by the C.I.O.

On the same day the A. F. of L. filed the representation petition herein with the Board, as the respondent admittedly learned shortly thereafter. C.I.O. employees and officials, during working hours, thereupon intensified the campaign, previously initiated by the leaflets described above, to secure the discharge of C.I.O. opponents under the closed-shop contract. This campaign was open and widespread.

On August 13, 1945, the A. F. of L. verified and thereafter duly filed the original unfair labor practice charge herein, alleging the discriminatory discharge of the five stewards and the four committee-

men. At the same time the A. F. of L. filed a waiver in the representation case, waiving its right to protest the results of the prospective election on the grounds alleged in the charge.

On August 15, 1945, according to the uncontradicted and credited testimony of employee Zulaica, he reported to Production Manager Stanberry, admittedly a management representative, that C.I.O. representatives were threatening him in the plant with discharge for wearing an A. F. of L. button. Stanberry admitted at the hearing that it was reported to him that C.I.O. adherents were "threatening the men" with discharge under the closed-shop contract for wearing A. F. of L. buttons.

A few days later, on August 17, 1945, the first two groups of complainants applied to the respondent for reinstatement. According to Wood, the respondent's director of labor relations, and admittedly a management representative, he refused the request on the ground that the applicants had been suspended from C.I.O. membership until the issue of violation of the constitution and by-laws had been "determined between you and the C.I.O."

On August 22, 1945, the date of the Board hearing on the A. F. L.'s petition, the C.I.O. distributed throughout the plant and posted on a bulletin board another leaflet, in part warning the employees of discharge for pro-A. F. of L. or anti-C.I.O. activity.

On August 30, 1945, a C.I.O. representative requested the respondent to discharge about 60 or 70 named employees who were allegedly in bad standing, or about one-fifth of the respondent's total non-

supervisory personnel, according to the estimate of Labor Relations Director Wood. Wood demurred, on the ground that the C.I.O. was "getting too many people involved," which might lead to a serious interruption of the respondent's operations. The C.I.O. then withdrew this particular demand. However, the event must have furnished the respondent further evidence that the C.I.O. was using its closed-shop contract as a means for removing its opponents among the employees.

On August 31, 1945, a C.I.O. representative told employee Norris that she was discharged for transferring from the C.I.O. to the A. F. of L. She reported the conversation to Production Manager Stanberry, who merely replied, "He can't do that." She then attempted to report the conversation to Superintendent Altman, but on finding him out of his office reported it to someone else in the office, who told her to ignore the statement of the C.I.O. representative and return to work.

Between August 31 and September 13, 1945, the respondent invoked the closed-shop contract at the C.I.O.'s request and discharged the remaining 28 complainants, including Zulaica and Norris, referred to above.[3] In its brief before the Trial Ex-

[3]The case of an additional complainant, Rose Gilbert (Schneider), was dismissed at the hearing. The names of the 37 other complainants are variously spelled in the record. In general we have adopted the spellings used by the respondent in a list which it submitted to the Regional Office in January, 1946, and which was received in evidence as Board Exhibit 15.

aminer the respondent admitted knowledge by this time of the A. F. of L. activity of many of its employees, including by inference the aforesaid group of 28 complainants.

On September 26, 1945, the Board issued its Decision and Direction of Election herein,[4] finding in part that the C.I.O. contract was not a bar to an election because it was of indefinite duration and had been in effect more than a year, and that the A. F. of L. had waived its right to protest the prospective election on the grounds alleged in the unfair labor practice charge filed by it in the complaint case. On October 16, the election was held, giving the C.I.O. a victory of 181 to 126 over the A. F. of L. The A. F. of L. thereafter duly filed objections to the election. The Board, after the close of the hearing in the complaint case herein, ordered a hearing on the objections. The parties then stipulated that they would rest on the evidence previously adduced in the complaint case hearing.

In October and December, 1945, the C.I.O., after trial, expelled the complainants, principally for their anti-C.I.O. conduct in "undermining union policies." There is no evidence that the C.I.O. expelled any of the complainants because of their attempted resignation or withdrawal nor did it so represent to the respondent. There is likewise no evidence that the C.I.O. expelled any of the other employees who had attempted to resign or withdraw.

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[4] 63 N.L.R.B. 1184.

Conclusions

Upon the foregoing findings of fact and the entire record in the case, we are of the opinion that the respondent knew, when it discharged and refused to reinstate the complainants, that the C.I.O. demanded such action because of the complainants' exercise of the right guaranteed employees in the Act to bargain collectively through representatives "of their own choosing";[5] that the respondent thereby violated Section 8 (1) and (3) of the Act, for the reasons stated in the Rutland Court case;[6] and that the A. F. of L.'s objections to the election should be sustained and the election vacated and set aside.

It is clear from the record, and we find, that the respondent knew of the C.I.O.'s reason for demanding the discharges.[7] Thus, several employees re-

[5]Unlike the Trial Examiner, we do not view the conclusionary testimony by various representatives of the respondent, to the effect that the respondent did not "know" that this was the C.I.O.'s motive, as establishing the respondent's lack of knowledge of such motive.

[6]Matter of Rutland Court Owners, Inc., 44 N. L. R. B. 587, 46 N. L. R. B. 1040, where the cause of the contracting union's discharge demand was the employees' refusal to reaffirm that organization as their collective bargaining representative for the period following the expiration of the term of the current valid contract, and their desire to substitute a rival labor organization. See, also, Matter of Portland Lumber Mills, 64 N. L. R. B. 159.

[7]Chairman Herzog considers this case wholly distinguishable from the recent Spicer Manufacturing Corporation case (70 N.L.R.B., No. 70), because the proof of employer knowledge is overwhelming here, but was—in his opinion—insufficient there.

ported to management representatives that the C.I.O. was threatening them with discharge under the closed-shop contract for rival union activity; and the C.I.O.'s campaign along this line, both orally and by written leaflets, was open and widespread. Moreover, the respondent's knowledge is further shown by its refusal to accede to the C.I.O.'s request for the discharge of what it apparently deemed to be too large and obvious a number of anti-C.I.O. employees. It is true that the respondent was not in possession of all the facts prior to the first and second groups of discharges. Before the discharge of the committeemen at the termination of the strike on August 3, 1945, however, the respondent learned of the C.I.O.'s plan to use its closed-shop contract to remove its opponents, for when C.I.O. Vice President Heide discovered the anti-C.I.O. activity of the committeemen, he baldly told two management representatives, Vice President Railey and Superintendent Altman, that the committeemen were thereupon being suspended. And before the discharge of the stewards the respondent must have learned of their anti-C.I.O. activity, for it is unreasonable to suppose that it would have agreed to the request made by one of them to shut down operations in order to enable working employees to attend a meeting the stewards planned to hold without ascertaining the reason for the meeting. Moreover, the respondent, when it refused the reinstatement application of these two groups of discharged employees on August 17, 1945, was clearly apprised of the nature of the dismissals

by the formal charges of discrimination which the A. F. of L. had filed with the Board. Finally, Labor Relations Director Wood admitted at the hearing, without making any differentiation among the various groups of discharges and refusals to reinstate, that he thought one of the reasons for the C.I.O.'s action was the complainants' anti-C.I.O. activity.[8]

The respondent's position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be "unjust" to require the respondent to determine whether the C.I.O.'s asserted motivation was "merely ostensible and not real," on

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[8]As for the complainants' withdrawal from the C.I.O., which would ordinarily entitle the respondent to discharge them in view of the closed-shop contract, it will be observed that the C.I.O. did not accept their withdrawals nor is there any evidence that the respondent discharged them or rejected the reinstatement application of the stewards and the committeemen for that reason. On the contrary, the respondent's answer and the evidence show beyond dispute that the respondent acted because of the complainants' suspension by the C.I.O. pending determination of charges of anti-C.I.O. activity, and that the attempted withdrawals played no part therein. Apparently the significance of the "withdrawals" occurred to the respondent for the first time in its brief to the Trial Examiner after the close of the hearing.

the ground that the respondent could not "necessarily have deduced" the C.I.O.'s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C.I.O.'s widespread and open campaign among the employees during the pre-election period and the respondent's knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C.I.O.'s failure to deny the obvious facts, to believe that the C.I.O. was not acting in reprisal against the complainants because of their anti-C.I.O. activity.

Upon the entire record, we find, contrary to the Trial Examiner, that the respondent discharged and refused to reinstate the complainants[9] in violation of Section 8 (1) and (3) of the Act. We further find that the A. F. of L.'s objections to the election should be sustained, not because of any events which preceded the filing by the A. F. of L. of the waiver, but because of the respondent's subsequent unfair labor practices, which prevented the election from being truly representative of the employees' free choice and from reflecting their free and untrammeled wishes as to collective bargaining representation. When the Regional Director advises us that the time is appropriate, we shall direct that a new election be held among the respondent's employees in the unit hereinbefore found appropriate.

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[9]Exclusive of Rose Gilbert (Schneider).

The Remedy

Having reversed the Trial Examiner's finding that the respondent did not discharge and refuse to reinstate the complainants (other than Gilbert) in violation of the Act and his failure to recommend that the respondent offer them reinstatement, we shall order our customary remedy in such circumstances, excluding from back pay the period between the date of the Intermediate Report and our Order herein.[10]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

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[10]See e. g., Matter of Bermite Powder Company, 66 N.L.R.B. No. 93.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munez, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perueca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole the persons named above in paragraph 2 (a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the

respondent's offer of reinstatement, less his net earnings during said periods;[11]

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

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[11]By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, County, Municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U.S. 7.

And It Is Further Ordered that the election held herein on October 16, 1945, be, and it hereby is, vacated and set aside.

Signed at Washington, D. C., this 6th day of September, 1946.

NATIONAL LABOR RELATIONS BOARD.

[Seal] PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

APPENDIX A

Notice To All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Sanford Moreau
David Luchsinger	Harry Smith
Frank Marshall	Edwin Thompson

Alden Lee	Manuel Souza
Terry Anderson	Henry Gianarelli
Felix Denkowski	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	William Howard
Calitto Rigo	Kay Norris
Robert Ashworth	Ina Paige
Thomas Azevedo	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

COLGATE-PALMOLIVE-PEET COMPANY

By .....

(Representative) (Title)

Dated .....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon appli-

cation in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

[Title of Board and Cause.]

ORDER DENYING MOTION

The Board having, on September 6, 1946, issued a Decision and Order in the above-entitled proceeding, and thereafter, counsel for Colgate-Palmolive-Peet Company having filed a motion to reconsider the aforesaid Decision, and the Board having duly considered the matter,

It Is Hereby Ordered that the aforesaid motion be, and it hereby is, denied, for the reasons already set forth in the said Decision and Order.

Dated, Washington, D. C., November 6, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board—Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.", the same being Case No. 20-C-1372 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Horace A.

Ruckel Trial Examiner for the National Labor Relations Board, dated February 4, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, together with all exhibits introduced in evidence.

(3) Copy of Company's telegram, dated February 20, 1946, requesting extension of time for filing brief before the Trial Examiner.

(4) Copy of intervenor's telegram, dated February 20, 1946, requesting extension of time to file brief before Trial Examiner.

(5) Copy of telegram, dated February 21, 1946, granting all parties extension of time to file briefs before the Trial Examiner.

(6) Copy of Board's telegram, dated February 26, 1946, granting further extension of time to file brief before Trial Examiner.

(7) Copy of Trial Examiner Ruckel's Intermediate Report, dated March 27, 1946; copy of order transferring case to the Board, dated March 29, 1946, together with affidavit of service thereof.

(8) Copy of Board attorney's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(9) Copy of union's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(10) Copy of Board's telegram, dated April 15, 1946, granting all parties extension of time to file exceptions and briefs.

(11) Copy of A. F. L.'s exceptions to the Intermediate report.

(12) Copy of Board Attorney's exceptions to the Intermediate Report, dated April 23, 1946.

(13) Copy of decision and order issued by the National Labor Relations Board on September 6, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(14) Copy of Company's telegram, dated September 19, 1946, requesting Board's decision and order be modified.

(15) Copy of Board's telegram, dated September 23, 1946, granting company permission to file a motion to reconsider and memorandum in support thereof.

(16) Copy of company's motion to reconsider.

(17) Copy of Board's order denying motion to reconsider, dated November 6, 1946, together with copy of affidavit of service thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Chief, Order Section.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of the following documents filed by the International Chemical Workers Union, A.F.L., "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," the same being Case No. 20-C-1372.

(1) Charge filed by International Chemical Workers Union, A. F. L. on August 14, 1945.

(2) First amended charge filed by International Chemical Workers Union, A. F. of L., on October 4, 1945.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,
Acting Chief, Order Section.

[Title of Board and Cause.]

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices

within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agent and employees, terminated the employment of:

Edwin H. Thompson	7/30/45
Lincoln F. Olsen	"
William Sherman	"
David Luchsinger	"
Harold L. Lonnberg	"
Frank Marshall	7/31/45
Harry Smith	"
Clyde Haynes	"
Sanford Moreau	"
Manuel Munoz	8/30/45
Robert Ashworth	"
Calixto Rigo	"
Tommy Azevedo	"
Nick Tate	8/30/45
Henry Hellbaum	"
Rose Ross	9/ 1/45
Esther Young	"
Ina M. Paige	"
Ophelia Reyes	"
Kay Norris	"
Ann Cerrato	"
Henry Giannarelli	"
Manuel Souza	"
Albert Zulaica	"
Mike Ramirez	"
Martin Heppler	"

Bill Howard	9/ 1/45
Glex Hixon	"
Alden Lee	"
Al Barboni	"
Felix Denkowski	"
A. L. Richards	"
Terry Anderson	"
K. Periera	"
Manuel Alegre	9/ 6/45
John Pevucca	"

because of their membership in and activities on behalf of International Chemical Workers Union, A.F.L., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interferred with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and

affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.,

By: .....

1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this..... day of ....., 1945, at .....

.....

Field Examiner.

Date filed Oct. 4, 1945.

[Title of Board and Cause.]

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Edwin H. Thompson	July 30, 1945
Lincoln F. Olsen	" " "
William Sherman	" " "
David Luchsinger	" " "
Harold L. Lonnberg	" " "
Frank Marshall	July 31, 1945
Harry Smith	" " "

Clyde Haynes ..... July 31, 1945
Sanford Moreau ..... " " "

because of their refusal to adhere to policies of Warehouse Union Local 1-6 ILWU, a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interferred with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.,
By: /s/ HARVEY E. HOWARD,
1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this 13th day of August, 1945, at San Francisco, California.

/s/ MERLE D. VINCENT, JR.,
Field Examiner.

Date filed August 14, 1945.

[Endorsed]: Filed Feb. 20, 1947.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of an extract of transcript of testimony in Case No. 20-R-1486, entitled "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, AFL."

The material herein is not a part of the record in Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-C-1372, and is not certified as a part of said record. It is merely certified as a true copy of an extract of the transcript of testimony in another case, to wit, In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-R-1486.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,
Acting Chief, Order Section.

[Title of Board and Cause.]

Pursuant to notice, the above-entitled matter came on for hearing at 10:20 a.m.

Before: Robert E. Tillman, Esq.,
Trial Examiner.

Appearances:

Harvey E. Howard, 1440 Broadway, Oakland, California, Labor Consultant and Representative, appearing on behalf of the International Chemical Workers Union, Local 233, the Petitioner.

O. L. Farr, 1958 High Street, Selma, California, International Representative, appearing on behalf of the International Chemical Workers Union, the Petitioner.

Gladstein, Grossman, Sawyer & Edises, by Bertram Edises, Esq., 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union No. 6. ILWU, the Interveners.

Charles A. Duarte, 158 Grand Avenue, Oakland, California, Business Agent, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Paul Heide, 158 Grand Avenue, Oakland, California, Vice President, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Bartley C. Crum, Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company.

Trial Examiner Tillman: The record should show at this time that the Petitioner, International Chemical Workers Union has filed a charge in the matter of Colgate-Palmolive-Peet Company, Case No. 20-C-1372, alleging violation of 8(1) and 8(3) of the Act. At this time I offer as Board's Exhibit 4 a waiver in connection with that charge, signed by the International Chemical Workers Union.

(Thereupon the document above referred to was marked Board's Exhibit No. 4 for identification.)

Trial Examiner Tillman: Do the parties wish to see the waiver?

Mr. Edises: Can we see the charge?

Trial Examiner Tillman: Yes. We will take a five-minute recess.

(Short recess.)

Trial Examiner Tillman: The hearing is in order.

Were there any objections to Board's Exhibit 4, that waiver filed by the International Chemical Workers?

Mr. Crum: We object to it for the record. It is our position that the charge in 20-C-1372 should be disposed of at the same time that this matter is being disposed of.

Trial Examiner Tillman: Is there any other objection?

Mr. Edises: Well, I am not sure that I agree with Mr. Crum that it should be disposed of at the same time that this hearing is disposed of, but I

do not see how, with a charge of violation of 8(3) of the Act and a violation of 8(1) of the Act charging that the company in numerous unspecified ways has interfered with, restrained and coerced its employees in the exercise of their rights under the Act, the Board can properly conduct a fair and free election at this plant until those charges have been aired and disposed of. Now, we certainly would not want to accuse the Chemical Workers of filing wild, groundless, or baseless charges. If there are substance to those charges they involve matters which go to the very essence of the freedom of these employees to choose their own representatives without coercion or interference. We have no way of knowing whether those rights have been interfered with with employees who are members of our organization, as well as members of the Chemical Workers organization, and for that reason we feel that we should place on the record an emphatic protest against proceeding on this representation matter until that charge has been aired and disposed of.

Trial Examiner Tillman: Well, I will overrule the objection to the receipt of the waiver.

(The document heretofore marked Board's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Tillman: As for your, in effect your motions that the "R" proceeding should not go ahead until the "C" case is decided, that will have to be decided by the Board.

Mr. Edises: May I add that we are not unwilling to participate in or to hear these charges. We favor it. Simply, that we do not feel that the issues here can be disposed of until those are first taken care of.

Mr. Crum: I would like the record to show that we too want these charges of unfair labor practices disposed of also. We are not unwilling to go forward with that. We would like simply to have the matter brought to a hearing.

I think the point made by Mr. Edises has merit, namely, that in spite of the waiver the charges, at least the extent that we know they are, do go to the very root of this matter before you.

Trial Examiner Tillman: Your statement will be before the Board so they will understand your position.

Mr. Edises: Mr. Chairman, would it be possible to get a ruling from the Board on this motion prior to our participating further in the hearing? Would it be possible to get a ruling, for example, by telephone or telegraph, or some other way?

Trial Examiner Tillman: No, I am afraid it isn't. That ruling will be made at the time of the decision.

Mr. Crum: Well, of course, Mr. Examiner, that defeats the very purpose of the motion, does it not?

Trial Examiner Tillman: I do not see that the motion has anything to do with the going ahead with the hearing at this time. The motion is really directed to holding an election as a result of the hearing.

Mr. Crum: Yes, but here is the situation in which on August 14th charges were lodged against the company. We have not even seen the original charge.

Trial Examiner Tillman: That is a customary practice.

Mr. Crum: I know that it is, but we have not seen it. That charge says, at least according to the information we have had from the Board, that we have violated Section 8, Sub-Section 1, and 3, of the National Labor Relations Act by interfering with, restraining, and coercing its employees. There is no description of what manner we coerced them except a line at the bottom that men were discharged because of their refusal to adhere to policies of Warehouse Union Local 6, ILWU.

The point I am trying to make is, and I think it has validity, if these charges remain suspended until the election matter is determined, we are going to have additional difficulty there.

Trial Examiner Tillman: Well, your objection, Mr. Crum, again goes to the holding of an election.

Mr. Edises: Mr. Examiner, a moment ago I said I thought the charges ought to be disposed of before the Board went into the question of representation for the reason that the Board might very conceivably find that there could be no resolution of the question of representation until the unfair labor practices, if any, had been dissipated. But it seems to me that at the very least the Board should consider these matters jointly. In other words, if there is an unfair labor practice or unfair labor practice

in effect at this plant, then there is a condition which must be remedied before the Board can resolve the question of representation.

Now, it is not enough that the A. F. of L. Chemical Workers has stated its willingness to waive the consequences of these unfair labor practices, that it is willing to go ahead with the election; that is an assumption that unfair labor practices could affect only the individuals who happen to have designated the A. F. of L. Chemical Workers, which is a false and unrealistic assumption. We believe ours to be the majority representation at that plant and any unfair labor practices, especially when you consider the broad and unspecified character of the charges filed here, are bound to have an effect upon the employees generally. So we renew very strongly our motion that the Board at least proceed to hear these two matters jointly, and as you know, that is well within the Board's power under its rules and regulations.

Now, I feel that it is necessary that we have a ruling on that matter before we proceed any further in this case.

Trial Examiner Tillman: Well, I will overrule your motion to the effect that the "C" case should be heard with the "R" case, and my only answer to your other objection, Mr. Edises, is that if these charges do affect your organization, then your organization should have filed a charge also.

Mr. Edises: We shall certainly have to consider that possibility, Mr. Examiner.

[Endorsed]: Filed Feb. 20, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY, (a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD

To the Honorable, Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

Colgate-Palmolive-Peet Company, a corporation (hereinafter referred to as the "Petitioner"), respectfully petitions this Court to review a certain final order issued by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by the Board against the Petitioner, in which said proceedings International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A. F. of L.") was a party, and wherein Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C. I. O.") was an intervenor. The proceeding resulting in said order is known upon the records of the Board as "In the

Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case Uo. 20-C-1372. The decision and order in said proceeding was entered by the Board on September 6, 1946. Thereafter, on September 24, 1946, the Board made an order permitting the Petitioner to file a motion to reconsider. This motion was filed on October 2, 1946. Subsequently, on November 6, 1946, the Board denied said motion to reconsider.

The above proceeding was consolidated, pursuant to order of the Board, with a proceeding for certification of representatives, entitled "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case No. 20-R-1486. On stipulation of the parties, said representation proceeding was determined upon evidence adduced at the hearing held in connection with Case No. 20-C-1372 above referred to.

In support of this petition, your Petitioner respectfully represents, alleges and shows as follows:

I.

Petitioner is, and was at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of Delaware. It operates plants in Jersey City, New Jersey, Brooklyn, New York (a subsidiary), Jeffersonville, Indiana, Kansas City, Kansas, and Berkeley, California. The events giving rise to the above proceedings occurred at the Berkeley, California, plant of the Petitioner. The course of these events extends from July 26, 1945, to October 15, 1945. At said

time and place the Petitioner was engaged in the manufacture and sale of soap and glycerine.

II.

The A. F. of L. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Chemical Workers Union, a voluntary unincorporated association affiliated with the American Federation of Labor.

III.

The C. I. O. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Longshoremen's and Warehousemen's Union, a voluntary unincorporated labor organization affiliated with the Congress of Industrial Organization. Said C. I. O. is now, and has been since the year 1938, the collective bargaining representative of Petitioner's employees. On or about July 9, 1941, the C. I. O., as said representative, entered into a collective bargaining agreement with Petitioner.

IV.

At all times herein mentioned, the labor organizations mentioned in paragraphs II and III hereof admitted, and do now admit, to membership employees of the Petitioner.

V.

At all times herein mentioned, Colgate-Palmolive-Peet Employees Welfare Association (hereinafter

referred to as the "Association") was an unincorporated labor organization, not affiliated with any national or international labor organization, and admitted employees of the Petitioner to membership.

VI.

On July 24, 1945, the Petitioner and the C. I. O. agreed in writing to extend said closed shop contract entered into in 1941, which said contract contained a provision requiring membership in good standing in the C. I. O. as a condition of employment. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the National Labor Relations Act (29 U.S.C.A. 158 (3)), which permits an employer to make a closed shop contract with a bona fide majority labor union covering an appropriate unit.

VII.

At all times herein mentioned, said C. I. O. was and has been a bona fide labor union representing a majority of the Petitioner's employees in the appropriate unit. The extension contract made on July 24, 1945, as aforesaid, is and has been at all times herein mentioned in full force and effect.

VIII.

Petitioner, by reason of the above mentioned final order of the Board, is a person aggrieved within the meaning of Section 10 (f) of the National Labor Relations Act (29 U. S. C. A. 160 (f)). Said order of the Board is a final order, and requires Petitioner to reinstate thirty-seven former employees who, by suspension and expulsion, forfeited their status as

members in good standing in said C. I. O., and further requires the Petitioner to make whole said former employees for any loss of pay they may have suffered by reason of their discharge from the employ of the Petitioner. Said order also requires the Petitioner to cease and desist from discouraging membership in the A. F. of L. or any other labor organization of its employees, or encouraging membership in the C. I. O. or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or by discriminating in any manner in regard to their hire or tenure of employment or any term or condition of their employment. Said order, in addition, requires the Petitioner to post throughout its plant at Berkeley, California, certain notices for sixty days, which said notices require a statement by Petitioner offering to said former employees immediate and full reinstatement and a statement that it will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of its employees because of membership in or activity on behalf of any labor organization.

The above described final order of the Board is erroneous in the following particulars:

1. The portion of the order requiring the Petitioner to reinstate employees, who by expulsion and suspension have forfeited their status as members in good standing of the C. I. O., is contrary to the terms of the contract between the Petitioner and the C. I. O.

2. The Board by its order compels the Petitioner to interfere with the exercise of rights guaranteed members of the C. I. O., as employees of the Petitioner, and to interfere with the administration and procedures of the C. I. O., contrary to the provisions of the National Labor Relations Act. (29 U. S. C. A. 158 (1) and (2).)

3. Said order is erroneous in that it deprives the Petitioner and the C. I. O. of valuable property rights, to-wit, said contract, extended or renewed, as stated above, on July 24, 1945, without due process of law.

4. Said order is erroneous in that it deprives the Petitioner, without due process of law, of property, in that it compels it to make whole said employees for any loss of pay which they may have suffered as a result of their dismissal from the employ of the Petitioner.

IX.

This petition for review is, because of the matters set forth hereinabove and hereinafter, authorized by the provisions of the National Labor Relations Act (29 U. S. C. A. 160 (f)), which said statute provides for a review of any such order of the Board in the Circuit Court of Appeals of the United States in the Circuit wherein the unfair labor practices in question are alleged to have been committed or wherein the person charged with the commission of said practices resides or transacts business.

The Petitioner transacts business in the City of Berkeley, County of Alameda, State of California,

and the alleged unfair labor practices occurred in said City of Berkeley.

X.

On August 13, 1945, the A. F. of L. verified and thereafter filed the original unfair labor practice charged in Case No. 20-C-1372, alleging the discriminatory discharge of the following named employees: Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman. No complaint, pursuant to these charges, was ever issued or served on the Petitioner. The above named persons were discharged by Petitioner because of the representation that they were not in good standing with the C. I. O. Said discharges occurred during the period July 30-31, 1945.

Prior to the filing of said charges, the A. F. of L. had, on August 3, 1945, filed a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of the employees of the Petitioner. Petitioner did not have knowledge of the filing of this petition until August 8, 1945. Pursuant to said petition for certification of representatives, a hearing was held on August 22, 1945. At said hearing, the Petitioner learned for the first time of the filing of said charges on August 13, 1945, and of the matter alleged therein. Said charges alleged that the above named persons had been discharged by the Petitioner because of the refusal of these persons to adhere to the policies of the C. I. O. At said time, the

C. I. O. had many policies and among these were the following:

1. No wartime strikes or work stoppages.
2. No racial discrimination.

XI.

On October 10, 1945, there was filed by the A. F. of L. an amended charge, and on January 18, 1946, a second amended charge. The amended charges alleged the discriminatory discharge of twenty-eight additional employees between August 30 and September 13, 1945. On January 18, 1946, the Board, by its Regional Director, finally issued a complaint alleging that the Petitioner had engaged in, and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 8 (3) and Section 2, subsections (6) and (7), of the National Labor Relations Act. Copies of the complaint, together with notice of the hearing thereon, were duly served on the Petitioner, the A. F. of L. and the C. I. O. On February 4, 1946, the Petitioner filed its answer admitting some of the allegations of the complaint but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the Petitioner pleaded the existence of a closed shop contract with the C. I. O. and asserted that all of said employees were discharged because of the representations of the C.I.O. that they were not members in good standing in that organization. All of the persons above named as well as all the other complainants in Cose No. 20-C-1372 either participated in or fomented and encour-

aged a strike at Petitioner's plant. Said strike lasted from July 30, 1945, to August 2, 1945.

XII.

Prior to the service of said complaint and on September 26, 1945, the Board issued its decision in Case No. 20-R-1486, and directed that on election by secret ballot be held to determine whether the Petitioner's employees desired to be represented for the purpose of collective bargaining by the A. F. of L. or the C. I. O. or by neither. The election was held on October 16, 1945, and was won by the C. I. O. On October 25, 1945, the A. F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C. I. O. be certified as the bargaining representative of the Petitioner's employees in the appropriate unit. The A. F. of L. filed exceptions to the Regional Director's report. The final order of the Board above referred to sustained the A. F. of L.'s objections to the election and set aside and vacated said election.

XIII.

Pursuant to notice and order issued by the Regional Director, a hearing was had in connection with Case No. 20-C-1372 at San Francisco, California. This hearing extended from February 4 to February 8, 1946, and Horace A. Ruckel, Trial Examiner duly appointed by the Chief Trial Examiner of the Board, presided. On the opening of the hearing, the C. I. O. made a motion to intervene, which was granted by the Trial Examiner. At said hearing,

beginning as aforesaid on February 4, 1946, oral and documentary evidence was received, and thereafter briefs by all the parties, except the Board, were submitted to the Trial Examiner, ond subsequently, on March 27, 1946, said Trial Examiner issued his intermediate report finding that the Petitioner had not engaged in any unfair labor practices within the meaning of Section 8 (1) and Section 8 (3) of the Act, and recommending that the objections to the election be overruled and that the complaint against the Petitioner be dismissed in its entirety. Following the issuance of the intermediate report, the A. F. of L. and the Board filed exceptions thereto. The Board, on September 6, 1946, made its decision that the order overruling the Trial Examiner, and finding that the Petitioner discharged and refused to reinstate the complainants in violation of Section 8 (1) and Section 8 (3) of the Act, and further finding that the A. F. of L.'s objections to the election should be sustained, and ordering that said complainants be reinstated and made whole for pay lost as set forth in paragraph VIII hereof.

XIV.

Said complaint in Case No. 20-C-1372 in paragraph V thereof charged that the Petitioner interfered with the rights guaranteed the employees in Section 7 of the National Labor Relations Act by:

> "(1) Discharging and threatening to discharge employees because of their membership in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance."

Said complaint in paragraph VI thereof charged that the Petitioner had discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the Association mentioned in paragraph V thereof and their attempts to substitute the Association for the C. I. O. as the bargaining representative of the employees and had subsequent to the discharge above mentioned refused to re-employ them because of their said activities and because of their membership in and activity on behalf of the A. F. of L.

Said paragraph also charged that the Petitioner had discharged twenty-eight other employees because of their membership in and activity on behalf of the A. F. of L. and the Association.

In paragraph VII of said complaint it was alleged as a conclusion that the charges set forth in paragraph VI thereof constituted discrimination in regard to hire and tenure of employment of the individuals discharged and intended to discourage membership in the A. F. of L. and the Association and to encourage membership in the C. I. O.

The Petitioner's answer to said complaint denied all the material allegations of the complaint and affirmatively, in paragraphs 5, 6, and 7 thereof, averred as follows:

"5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

'Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees cov-

ered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove precribed. In the hiring of new help for the warehouses, they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.'

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because

of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good standing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann

Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the war, in violation of said I.L.W.U.'s wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation or one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U."

XV.

The evidence adduced at the hearing sustained without conflict or contradiction each and every one of the affirmative averments of the said answer

above set forth and in addition disclosed the following:

(a) That all of the complainants had given notice to the Petitioner and to the C. I. O. by means of telegrams that they had withdrawn from the C. I. O. and that they were no longer represented by the C. I. O. One of said telegrams read as follows:

> "You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.
>
> EMPLOYEES WELFARE ASSOCIATION.
> By Negotiating Committee"

(b) That Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau and Harry Smith, complainants before the Board, were shop stewards policing the said contract on behalf of the C. I. O. ond had in the past been reprimanded by the C. I. O. for not enforcing the policy of the C. I. O. against racial discrimination.

(c) That during the war, the C. I. O. had strictly enforced its announced policy against wartime strikes.

(d) That when the work stoppage referred to in the answer occurred, the public press carried news stories with reference to said stoppage and reported

that the above named stewards and others were at odds with the C. I. O. because of differences arising from the policy against racial discrimination.

(e) That the evidence disclosed that the various complainants were tried by rank and file Trial Committees of the C. I. O., and were found guilty of participating in and encouroging a wartime strike and not enforcing other C. I. O. policies, including the policy against racial discrimination.

(f) That said Trial Committees had not found complainants guilty of activity on behalf of the A. F. of L. That many of the Company's employees who had carried on activities on behalf of and joined the A. F. of L. had not been suspended or expelled from the C. I. O. That the Petitioner had knowledge of all matters set forth above in subparagraphs (a), (b), (c), (d) and (e).

(g) That the Petitioner had been advised by the C. I. O. that some of the employees whose discharge was sought were either delinquent in their dues or were not members of the C. I. O. Two of the complainants, Rose Gilbert and Frank Navarro, were in fact not members of the C. I. O.

(h) That as to the other complaiinants, during the period of the discharges, to-wit, July 30, 1945-September 13, 1945, neither the C. I. O. nor the A. F. of L. informed the Petitioner as to the reasons underlying the dismissals, although the Petitioner endeavored to learn from them the reasons therefor.

(i) That a substantial number of the complainants had pleaded guilty to the charge of having participated in a wartime strike contrary to the poli-

cies of the C. I. O. before a Trial Committee, and that, on the basis of said plea, said complainants were suspended and were working out of the C. I. O. hiring hall but at places other than the Petitioner's plant.

XVI.

During the hearing at the close of the Board's case, counsel for the Petitioner moved to dismiss the following charges in paragraph V of the complaint:

> "(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.
>
> * * * * * *
>
> (5) Keeping Union meetings under surveillance."

Said motions were granted by the Trial Examiner and in this connection he was not overruled by the Board in its decision and order above referred to.

At the conclusion of the hearing, counsel for the Petitioner renewed a motion to dismiss the following charges in paragraph V of the complaint:

> "(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.
>
> (4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged."

These motions were in effect granted by the Trial Examiner in his intermediate report and as to these rulings he was not overruled by the Board in its aforesaid decision and order.

At the conclusion of the hearing, counsel for the Petitioner moved to dismiss all the other charges contained in the complaint, as follows:

"Mr. Hecht: Mr. Examiner, at this time on behalf of the Respondent I would like to have all charges brought on behalf of Edward Navarro dismissed.

The Examiner will recall that Mr. Navarro was a member of the C. I. O. No. 1304, Machinists, and actually never maintained, or never had an ILWU status at the plant.

* * * * * *

Mr. Hecht: Mr. Examiner, at this point I also would like to move to dismiss all charges brought on behalf of the following named complainants: Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppler, Alden Lee, Felix Dunkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Catano Periera, Rose Ros and John Puruca.

The basis of the motion, Mr. Examiner, is the basis of my motion directed to Albert Zulaica, for the reason that these persons who are now complainants here pleaded guilty to charges brought against them by the ILWU, and it is hardly fitting that persons who have admitted

that they were put in bad standing for reasons other than membership of the A. F. of L. should be in this Board before this Board claiming relief on the basis that they were discharged for A. F. of L. activity.

Trial Examiner Ruckel: Ruling on the motion is reserved.

* * * * * *

Mr. Hecht: I think that the record and the findings would bear the contrary out, Mr. Royster, and I am not saying they were guilty of the charge, but I am saying that they did admit the charge.

Trial Examiner Ruckel: Any further motions?

Mr. Hecht: I will move, without stating the grounds (I think I have already expressed them to the Examiner) to dismiss the whole proceeding on the basis that this is an attack on the validity of a contract that has not otherwise been in any way impeached as fraudulent, invalid, or an imposition on the desires of the complainants before this Examiner.

Trial Examiner Ruckel: Ruling is reserved." (Record, pp. 692-695.)

In its brief before the Trial Examiner, the Petitioner pointed out that the evidence adduced at the hearing showed that the Petitioner knew of many reasons why the complainants could have been placed in bad standing by the C. I. O. in addition to their activities on behalf of and membership in the A. F. of L.

The Trial Examiner, in recommending that the above motion to dismiss be granted, stated as follows in his intermediate report:

> "The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C. I. O. and to have had access to the minutes and records of the meeting or meetings at which the Union's decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the operation of the Act. In any event, he has no means of compelling it." (Intermediate Report, p. 23.)

In overruling the Trial Examiner's recommendations, the Board stated the following:

> "The respondent's position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the

Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be 'unjust' to require the respondent to determine whether the C. I. O.'s asserted motivation was 'merely ostensible and not real,' on the ground that the respondent could not 'necessarily have deduced' the C. I. O.'s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C. I. O.'s widespread and open campaign among the employees during the preelection period and the respondent's knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C. I. O.'s failure to deny the obvious facts, to believe that the C. I. O. was not acting in reprisal against the complainants because of their anti-C. I. O. activity." (Decision and Order, p. 5.)

XVII.

The decision, finding and order of the Board are also erroneous for reasons other than those hereinabove stated in paragraph VIII hereof. These reasons are as follows:

(a) The decision and order of the Board makes a judge of the Petitioner, punishes it for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet

with the approval of the Board. Under the circumstances of the case, there has been by this decision of the Board set up a new judicial system where the employer serves as a judge of first instance and where the Board is the Court of last resort, with the further and strange complication that the judge of the lower Court is not only reversed but is punished for having committed error in evaluating the evidence presented to it.

(b) The decision and order of the Board are also erroneous because they destroy a contract admittedly protected by Section 8 (3) of the Act.

(c) The decision and order of the Board are erroneous because they read into the Act new provisions not contemplated by its framers and which are in fact contrary to the intention and purpose of those who drafted it. The legislative history of the Act without equivocation discloses that it was not intended to prevent the coercion of employees by other employees and labor organizations. The following is to be found in Senate Report 573, page 16, 74th Congress, First Session:

> "There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute 'coercion.' A threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts closed-shop agreements or strikes for such agreements

> are condemned as coercive.' Thus to prohibit employees from 'coercing' their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organization, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act." (Sen. Rep. No. 573, p. 16, 74th Cong., 1st Sess.: House Rep. No. 1174, p. 16, 74th Cong., 1st Sess.) (Emphasis ours.)

(d) The findings of the Board supporting said decision and order must be set aside because they are based either upon invalid inferences or upon facts consistent with either of two inconsistent hypotheses.

All of the foregoing errors have been particularly pointed out to the Board, not only in the brief submitted to the Trial Examiner, which was before it, but also in the Petitioner's motion to reconsider.

Wherefore, your Petitioner prays this Honorable Court to review the Board's order of September 6, 1946, pursuant to Section 10 (f) of the National Labor Relations Act, and that upon the filing of this petition and the service of a copy thereof on the Board and the filing with the Clerk of the Circuit Court of Appeals of a sworn return of such service, a notice that the petition has been filed in the Circuit Court of Appeals be directed to said Board, and that the said Board be directed to certify a transcript of the entire record of these proceedings, to-

wit, the record in Cases Nos. 20-C-1372 and 20-R-1486, including the pleadings, the Trial Examiner's intermediate report, Petitioner's brief and motion to reconsider, the charge filed on August 13, 1945, the testimony and all the evidence upon which the Board's order and decision were entered, and to file it, when so certified, with this Court.

Petitioner further prays that this Honorable Court take jurisdiction of these proceedings and that the order of th Board of September 6, 1946, be stayed pending a disposition thereof and that this Court make and enter a decree setting aside the said decision and order of the Board of September 6, 1946, and for such other and further relief as this Honorable Court may deem just and proper.

Dated, San Francisco, California, December 18, 1946.

Respectfully submitted,

BARTLEY C. CRUM,
PHILIP S. EHRLICH,
R. J. HECHT,
Attorneys for Petitioner.

State of California,
City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says:

That he is an officer of the Petitioner Colgate-Palmolive-Peet Company, a corporation, to-wit, a vice-president of said corporation; that he has read

the foregoing petition for review of a final order of the National Labor Relations Board and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief and as to those matters he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 28th day of December, 1946.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 30, 1946.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS CONSTITUTING ERRORS IN FACT AND IN LAW IN RULINGS AND DECISION OF THE BOARD RELIED UPON BY PETITIONER HEREIN.

1. The Board erred in overruling Petitioner's motion to dismiss the complaint:

(a) In that there is no evidence sufficient to establish that the Petitioner discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo,

Manuel Munoz, Henry Hellbaum, Nick Fate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro for activity on behalf of the International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A.F.L.") and activity against Warehousemen's Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C.I.O.").

(b) In that there is no evidence sufficient to establish intent or purpose by the Petitioner to hinder or penalize the persons named in 1(a) above for activity on behalf of said A.F.L. and activity against said C.I.O.

(c) In that there is no evidence that the Petitioner discriminated against the persons named in 1(a) above, or interfered with the rights of any other employees to self organization, or that the Petitioner engaged in unfair labor practices prohibited by the National Labor Relations Act.

(d) In that the evidence conclusively proves the fact that the Petitioner could not have formed any definite opinion as to the motivation of the C.I.O. in requesting the discharge of the persons named in 1(a) above.

(e) In that the evidence is conclusive of the fact that the discharge of the persons named in

1(a) above by Petitioner was unrelated to any activity of said persons on behalf of the A.F.L. and against the C.I.O. and of the fact that the obligation of the Petitioner's contract with the C.I.O. required it to discharge, upon notice, employees failing to maintain membership in good standing, and of the fact that the discharges of said persons were wholly pursuant to the provisions of said contract.

2. The Board erred in denying the motion of Petitioner to dismiss the said complaint upon which its decision and order are rested, inasmuch as the testimony and the evidence at the hearing established the existence of a contract between Petitioner and the C.I.O., executed in conformity with the terms of the National Labor Relations Act, which said contract, admitted by the Board to be valid, constituted, and does constitute, a complete bar to these proceedings, in that said contract requires the Petitioner upon notice by the C.I.O. to discharge any members of said C.I.O. not in good standing.

3. The Board erred in its decision and order for the reason that the persons named in 1(a) above failed to maintain membership in good standing in said C.I.O., a condition precedent to continued employment, and that their failure to comply with such contractual conditions was the sole cause of their discharges.

4. The Board erred in its decision and order inasmuch as the Board has no jurisdiction over the internal administration or management of the affairs of the C.I.O.

5. The Board erred in its decision and order for the reason that it requires by its said decision that the Petitioner inquire into, interfere with and police the internal administraton and management of the C.I.O.'s affairs, all contrary to law, in that neither the Petitioner nor the Board has power or jurisdiction to intrude into the internal management of the C.I.O.'s affairs.

6. The Board erred in its decision and order in that by the terms of the contract admitted to be valid, in accordance with the terms of the National Labor Relations Act, the C.I.O. is the sole judge of its membership, and neither the Petitioner nor the Board possesses power to regulate the Union in its admission or exclusion of members or its power to discipline or try them under its constitution and by-laws, and in that the persons named in 1(a) above were compelled by the terms of said constitution and by-laws to exhaust their remedies within the said C.I.O. and in that, if further relief was desired by them, they were compelled to apply to the Courts of the State of California for a review of the action taken by the C.I.O.

7. The Board erred in its decision and order in that Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Henry Hellbaum, Sebastian Ramirez, Terry Anderson, Henry Gianarelli, Ophelia Reyes, William Howard, Kay Norris, Genevieve Young, Frank Richmond, Manuel Alegre and Ed-

ward Navarro were called upon to stand trial under the terms of the constitution and by-laws of the said C.I.O. but said persons refused to stand trial, and by their said refusal accepted the decision of the C.I.O. debarring them from membership therein, and having failed to avail themselves of the remedies provided by the constitution and by-laws of the C.I.O., no attack upon said decision of the C.I.O. is open to them in proceedings either before the Courts or before any special tribunals, such as the National Labor Relations Board.

8. The Board erred in its decision and order in the Calixto Rigo, Caetano Perreira, Glenn Hixson, Martin Heppeler, Thomas Azevedo, Manuel Souza, Robert Ashworth, Felix Denkowski, Vincent Barboni, Allen Lee, John Perucca, Manuel Munoz, Ann Cetrati, Rose Ros, Ina Paige, Nick Tate and Albert Zulaica were called upon to stand trial before the C.I.O. and did so stand trial on December 17, 1945, and pleaded guilty to the charge of having participated in, or fomenting and encouraging a strike contrary to the policies of the C.I.O., and by said plea of guilty they have accepted the decision of the C.I.O. debarring them from membership and placing them on probation and forbidding said persons from working at the Petitioner's plant; and having so conducted themselves, said persons cannot now make any attack upon said decision of the C.I.O. in proceedings either before the Courts or any special tribunals, such as the National Labor Relations Board:

9. The Board erred in its decision and order in that by its decision the Board undertakes to nullify the constitution and by-laws of the C.I.O., which constitution and by-laws provide an exclusive procedure for review and appeal on behalf of any member aggrieved by an order or decision of expulsion and suspension and to substitute in lieu of the constitution and by-laws of the C.I.O. the Board's own procedure, which said procedure is not laid down by any Act of Congress and is in violation of the terms of the National Labor Relations Act itself and contrary to its legislative history.

10. The Board erred in its decision and order in that it thereby prohibits the coercion of employees by other employees or labor organizations; and said coercion of employees by other employees or labor organizations is not prohibited by the National Labor Relations Act.

11. The Board erred in its decision and order in that it has thereby found the C.I.O. to be guilty of unfair labor practices and it has thereby required the vicarious expiation of the wrong doing, if any, of the C.I.O. through punishment visited upon the Petitioner.

12. The Board erred in its decision and order in that its decision and order requires the Petitioner to breach its contract with the C.I.O. and imposes upon the Petitioner a penalty for complying therewith, notwithstanding that the said contract is valid under the terms of the National Labor Relations Act and is enforceable under the laws of

the State of California where the contract was executed. The Board has no jurisdiction to exonerate or relieve Petitioner from the obligations of said contract.

13. The Board erred in its decision and order in that its decision and order amounts in effect to nullifying Section 8(3) of the National Labor Relations Act, recognizing the validity of the contract herein at issue, and in that it requires the Petitioner to intrude itself as a judge or tribunal into the internal administration and affairs of the C.I.O. and to examine into and inquire into and review its disciplinary measures and procedures and to interfere with the C.I.O.'s rights, under its constitution and by-laws, to expel or discipline delinquent members, contrary to the express terms of the National Labor Relations Act, 29 U.S.C.A. 158 (1) and (2).

14. The Board erred in its decision and order in refusing to dismiss the complaint because there was no evidence or testimony adduced upon the hearing to establish the violations of the National Labor Relations Act alleged in said complaint.

15. The decision and order of the Board is erroneous because there is no evidence sufficient to support the findings of fact and conclusions of law set forth therein.

16. The Board erred in its decision and order in that the said order deprives the Petitioner of property without due process of law inasmuch as Petitioner is called upon under the terms of said

order to make whole the persons named in 1(a) above for any loss of pay they have suffered since the termination of their employment with Petitioner, contrary to the Fifth Amendment to the Constitution of the United States.

17. The Board erred in its decision and order in that the said order deprives this Petitioner of its property rights and privileges accruing to it under its contract herein set forth without due process of law, and serves to impair the obligations and benefits of its contract contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and in that it assumes a power in the Board to sit in review or judgment upon the validity of a contract validly executed under the laws of the State of California, and specifically rendered valid under the terms of the National Labor Relations Act, which constitutes a power and a jurisdiction to adjudicate the validity of contracts vested only either in the State or Federal Courts but nowhere granted to the National Labor Relations Board by the provisions of the National Labor Relations Act.

Dated: February 8, 1947.

/s/ BARTLEY C. CRUM,
/s/ PHILIP C. EHRLICH,
/s/ R. J. HECHT,
Attorneys for Petitioner.

[Endorsed]: Filed Feb. 10, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AND TO SET ASIDE ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER.

To: The Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, U.S.C. Supp. V, Title 29, Sec. 151, et seq.), hereinafter called the Act, files this answer to the petition for review of and to set aside an order issued by the Board against Colgate-Palmolive-Peet Company, petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in Parts II, IV, V, IX, and XII, of the Petition for Review.

2. Answering the allegations contained in Part VII of the Petition for Review, the Board admits that its order is a final order, and that Petitioner is a person aggrieved within the meaning of Section 10(f) of the Act. And further answering the allegations contained in said Part, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evi-

dence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter. And further answering the allegations contained in said Part, the Board denies each and every allegation of error contained in subparagraphs 1 through 4.

3. Answering the allegations contained in Parts I, III, VI, VII, X, XI, XIII, XIV, XV, and XVI, of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter.

4. The Board denies each and every allegation of error contained in Part XVII of the Petition for Review.

5. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

6. The Board respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's decision and order be set aside.

7. The Board further respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's order be stayed pending the disposition of the proceedings herein.

8. The Board, pursuant to Section 10(e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on September 6, 1946, in the proceedings designated on the records of the Board as Case No. 20-C-1372, entitled: "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L."

In support of this request for enforcement of its order, the Board respectfully shows:

(a) Colgate-Palmolive-Peet Company, a Delaware corporation, is engaged in business at Berkeley, California. This Court has jurisdiction of the Petition for Review herein and of the request for enforcement by virtue of Section 10(e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board, on September 6, 1946, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munzo, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Geneviove Young, Frank Richmond, Manuel Alegre, John

Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

(b) Make whole the persons named above in paragraph 2(a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the respondent's offer of reinstatement, less his net earnings during said period;[11]

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly

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[11]By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Corssett Lumber Company, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U. S. 7.

signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On September 6, 1946, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10(e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this proceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order set forth hereinabove, a decree denying the petition to review and set aside and enforce in whole said

order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals for the Ninth Circuit, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:." The Board further prays that in lieu of the phrase "Above-named union" in the second paragraph of "Appendix A" there be substituted "International Chemical Workers Union, A.F.L."

A. NORMAN SOMERS,

Assistant General Counsel
National Labor
Relations Board.

Dated at Washington, D. C., this 28th day of January, 1947.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Alden Lee
David Luchsinger	Terry Anderson
Frank Marshall	Felix Denkowski
Sanford Moreau	Manuel Souza
Harry Smith	Henry Gianarelli
Edwin Thompson	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	Kay Norris
Calitto Rigo	Ina Paige
Robert Ashworth	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

COLGATE-PALMOLIVE-PEET COMPANY,
(Employer).

By .....
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

District of Columbia—ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents

thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn before me this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Notary Public, District of Columbia.

My Commission Expires August 14, 1949.

[Endorsed]: Filed Feb. 3, 1947.

At a Stated Term, to wit: The October Term 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the seventeenth day of February in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable Francis A. Garrecht,
Senior Circuit Judge, Presiding,
Honorable Homer T. Bone, Circuit Judge,
Honorable William Orr, Circuit Judge.

[Title of Cause.]

ORDER PERMITTING INTERVENTION

Upon consideration of the motion to intervene of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, C.I.O., filed

February 13, 1947, and of the petition to intervene of International Chemical Workers Union, A. F of L., and of Clyde Haynes et al., filed February 13, 1947, and good cause therefor appearing,

It Is Ordered that each of said petitions to intervene be, and hereby is granted, and that said petitioners be, and they hereby are allowed to intervene in the above-entitled cause, and that they are allowed to file and serve their respective complaints in intervention.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY (a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. OF L., CLYDE HAYNES, DAVID LUCHSINGER, FRANK MARSHALL, SANFORD MOREAU, HARRY SMITH, EDWIN THOMPSON, HAROLD LONNBERG, LINCOLN OLSEN, WILLIAM SHERMAN, CALITTO RIGO, ROBERT ASHWORTH, THOMAS AZEVEDO, MAN-

UEL MUNOZ, HENRY HELLBAUM, NICK TATE, GLENN HIXSON, VINCENT BARBONI, MARTIN HEPPELER, SEBASTIAN RAMIREZ, ALDEN LEE, TERRY ANDERSON, FELIX DENKOWSKI, MANUEL SOUZA, HENRY GIANARELLI, ALBERT ZULAICA, ANN CERRATO, OPHELIA REYES, WILLIAM HOWARD, KAY NORRIS, INA PAIGE, CAETANO PERREIRA, ROSE ROS, GENEVIEVE YOUNG, FRANK RICHMOND, MANUEL ALEGRE, JOHN PERUCCA and EDWARD NAVARRO,

Plaintiffs in Intervention,

vs.

COLGATE-PALMOLIVE-PEET COMPANY, a corporation,

Defendant in Intervention.

COMPLAINT IN INTERVENTION

Comes now plaintiffs in intervention, after leave of this Court first had and obtained, and file this, their Complaint in Intervention, and for cause of action and grounds for intervention allege:

I.

That plaintiff in intervention, International Chemical Workers Union, A. F. of L., hereinafter called AFL, was at all times herein mentioned a labor organization as defined in the National Labor Relations Act, and was the duly constituted repre-

sentative of the above-individually named plaintiffs in intervention.

II.

That on September 6, 1946, the National Labor Relations Board made an order, which has now become final, ordering defendant in intervention:

a) To cease and desist from discouraging membership in the AFL, or any other labor organization, or encouraging membership in any labor organization by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

b) To offer the above-individually named plaintiffs in intervention immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and

c) To make whole said individually named plaintiffs in intervention for any loss of pay they have suffered by reason of defendant in intervention's discrimination against them.

III.

That defendant in intervention, instead of complying with said order of the National Labor Relations Board, has petitioned this Court to review said order.

IV.

That the above-named plaintiffs in intervention are the beneficiaries of said order, and would be the parties aggrieved by any modification thereof by this Court.

V.

That said order was in all respects duly made by said National Labor Relations Board upon sufficient and proper evidence offered and received in a hearing before a Trial Examiner of said National Labor Relations Board; that the sole issue in said case was whether defendant in intervention discharged the said individually named plaintiffs in intervention with knowledge of their activities on behalf of the AFL, and in the exercise of the right guaranteed to said persons, as employees of defendant in intervention, by the National Labor Relations Act to bargain collectively through representatives of their own choosing; that said evidence disclosed that defendant in intervention

a) knew of said activities and the purpose thereof as early as July 28, 1945, two days before the first discharges herein, at which time defendant in intervention was requested to and did shut down its plant for a period of two hours to allow its employees to attend a meeting for the purpose of considering the transfer of their affiliation to another labor organization;

b) learned further of said activities and the purpose thereof on July 30, 1945, through the distribution of leaflets in the plant and the holding of a general employees' meeting for which the plant was shut down;

c) learned further of said activities and the purpose thereof on July 31, 1945, during the course of an interview with officers of defendant in intervention concerning the reinstatement of the first

group of employees discharged, and by additional leaflets distributed in the plant;

d) learned further of said activities and the purpose thereof by the filing of a petition for representation by the AFL on August 3, 1945, and by the filing by the AFL, on August 13, 1945, of an unfair labor practice charge;

e) learned further of said activities and the purposes thereof by reports to defendant in intervention's production manager, as admitted by said production manager in his testimony;

f) learned further of said activities and the purposes thereof from leaflets distributed in the plant and posted on the plant bulletin board, on August 22, 1945;

g) learned further of said activities and the purposes thereof, and the inter-union controversy among the employees of defendant in intervention, by an interview on August 30, 1945, with a representative of the ILWU CIO; hereinafter called CIO.

VI.

That on the basis of the above, and other, evidence the National Labor Relations Board found the proof of knowledge on the part of defendant in intervention to be "overwhelming".

VII.

That said order of the National Labor Relations Board is legal and correct in all respects and does not compel defendant in intervention to interfere with the rights of its employees, contrary to the

provisions of the National Labor Relations Act, does not deprive either defendant in intervention or the CIO of property or property rights without due process of law, and does not make a judge of and punish defendant in intervention "for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet with the approval of the Board," but, rather, said order is based upon a finding, upon the evidence, that defendant in intervention made no bona fide effort to evaluate the evidence before it of its employees' activities and of the purpose of the CIO in requesting the discharge of the above-named individual plaintiffs.

Wherefore, plaintiffs in intervention pray that said petition to review be dismissed.

Dated at San Francisco, California, this 14th day of February, 1947.

TOBRINER & LAZARUS,
By /s/ MATHEY O. TOBRINER,
/s/ JONATHAN H. ROWELL,
Attorneys for Plaintiffs in Intervention.

State of California,
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in

Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those things that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Franciso authorized to verify said Complaint.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 14th day of February, 1947.

[Seal] /s/ LOUIS WIENER,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] Filed Feb. 17, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Plaintiff in Intervention.

COMPLAINT IN INTERVENTION OF WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO)

Comes now Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), Plaintiff in intervention, hereinafter called CIO, after leave of this Court first had and obtained, and files this its complaint in intervention and for cause of action and grounds for intervention alleges:

I.

Plaintiff in intervention, CIO, is and at all times herein mentioned was a labor organization within

the meaning of Section 2 (3) of the National Labor Relations Act, and for a number of years has been and now is the duly designated collective bargaining representative of the employees of petitioner Colgate-Palmolive-Peet Company at its Berkeley plant, having been certified as such by the National Labor Relations Board.

II.

On September 6, 1946, the National Labor Relations Board made and entered its order wherein, among other things, it ordered the reinstatement to petitioner's employ of Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro.

III.

CIO is adversely effected by said order, and would be aggrieved by its enforcement by this Court, and said order is erroneous and unlawful in the following particulars:

1. The Order requires the reinstatement of certain employees who are not members in good standing of CIO and hence is in conflict with the

terms and provisions of a valid contract between petitioner and CIO requiring membership in CIO as a condition of employment by petitioner.

2. The individuals ordered reinstated formally resigned from CIO prior to their dismissal by petitioner, thereby forfeiting their status as members in good standing in CIO and disqualifying themselves for employment by petitioner.

3. Said individuals were duly suspended or expelled from membership in CIO for activities inimical to the welfare of CIO and violative of the constitution and laws of CIO, after a formal trial by a rank and file committee on due notice with opportunity to appear and defend against the charges.

4. Said Order requires the reinstatement of individuals who deliberately engaged in a strike during wartime, in violation of the solemn and binding no-strike pledge of CIO, and who thereby interferred with and obstructed the flow of vital war material to the armed forces.

5. Said Order is based on the unsupported finding that said individuals were disciplined by the CIO and deprived of employment by petitioners on account of their activities in behalf of the AFL.

6. That said Order is based on the unsupported finding that petitioner company had knowledge of reasons for CIO's disciplinary action other than the reasons set forth in paragraphs 3 and 4 hereof; that in fact petitioner company had no knowledge of any such other reasons, inasmuch as CIO's action was based solely on the grounds previously stated

herein, and not on any activities by said individuals in behalf of another labor organization.

7. Said Order is predicated upon the erroneous theory that where an employer has been officially notified of the suspension or expulsion of members of a labor organization, and has been duly furnished with the findings and decision of the trial committee indicating that due process of law was followed in disciplinary proceedings and that the grounds for disciplinary action were lawful and proper, the employer is nonetheless obligated to go behind such notice and probe into the internal affairs of the labor organization to determine whether the proceedings were sham or bona fide, whether the stated reasons are true, whether there are additional unstated reasons for the action taken, and similar matters in conflict with the employer's duty not to meddle with the internal affairs of labor organizations.

Wherefore, plaintiff in intervention, CIO, prays that the said final Order of the Board be set aside in whole.

Dated at Oakland, California, this 24th day of February, 1947.

EDISES, TREUHAFT & CONDON,

By /s/ BERTRAM EDISES,

Attorneys for Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, CIO.

State of California,
County of Alameda—ss.

Paul Heide, being first duly sworn, deposes and says:

That he is an official, to wit, Vice-President of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), plaintiff in intervention herein; and is authorized to verify the said complaint; that he has read the foregoing complaint in intervention and knows the contents therein; that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those things that he believes it to be true.

PAUL HEIDE.

Subscribed and sworn to before me this 24th day of February, 1947.

[Seal] /s/ ELIZABETH WHITE,
Notary Public in and for the County of Alameda, State of California.

[Affidavit of service by mail attached.]

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. OF L., CLYDE HAYNES, DAVID LUCHSINGER, FRANK MARSHALL, SANFORD MOREAU, HARRY SMITH, EDWIN THOMPSON, HAROLD LONNBERG, LINCOLN OLSEN, WILLIAM SHERMAN, CALITTO RIGO, ROBERT ASHWORTH, THOMAS AZEVEDO, MANUEL MUNOZ, HENRY HELLBAUM, NICK TATE, GLENN HIXSON, VINCENT BARBONI, MARTIN HEPPELER, SEBASTIAN RAMIREZ, ALDEN LEE, TERRY ANDERSON, FELIX DENKOWSKI, MANUEL SOUZA, HENRY GIANARELLI, ALBERT ZULAICA, ANN CERRATO, OPHELIA REYES, WILLIAM HOWARD, KAY NORRIS, INA PAIGE, CAETANO PERREIRA, ROSE ROS, GENEVIEVE YOUNG, FRANK RICHMOND, MANUEL ALEGRE,

JOHN PERUCCA, & EDWARD NAVARRO,
Plaintiffs in Intervention,
vs.
COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),
Defendant in Intervention.

ANSWER OF PETITIONER AND DEFENDANT IN INTERVENTION, COLGATE-PALMOLIVE-PEET COMPANY, A CORPORATION, TO COMPLAINT IN INTERVENTION OF INTERNATIONAL CHEMICAL WORKERS UNION, A. F. OF L., ET AL, PLAINTIFFS IN INTERVENTION.

To the Honorable, the Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

Comes now the petitioner and defendant in intervention, Colgate-Palmolive-Peet Company, a corporation, and files its Answer to the Complaint in Intervention of International Chemical Workers Union, A. F. of L., Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calitto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay

Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro, and admits, denies and avers as follows:

1. Answering the allegations of Paragraph I of said Complaint in Intervention, the petitioner and defendant in intervention admits that the plaintiff in intervention, International Chemical Workers Union, A. F. of L., was at all times mentioned in said complaint a labor organization, as defined in the National Labor Relations Act. As to the allegation that said International Chemical Workers Union, A. F. of L. was the duly constituted representative of the individually named plaintiffs in intervention, petitioner and defendant in intervention avers that it is without knowledge or information to form a belief upon the subject matter of said allegation, and therefore, on that ground, denies, generally and specifically, each and every part thereof.

2. Answering the allegations of Paragraphs II and III of said Complaint in Intervention, the petitioner and defendant in intervention admits all the allegations contained in said Paragraphs II and III of said Complaint in Intervention.

3. Answering the allegations of Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph IV of said Complaint in Intervention.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act, having been enacted for the sole and only purpose of furthering and protecting the public interest and not for the purpose of enforcing private rights, the plaintiffs in intervention herein are not parties aggrieved within the meaning of the Act, and therefore have no legal right to intervene herein.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act gives no authority for any proceeding by a private person or group, or by any employee or group of employees to secure the enforcement of an order of the National Labor Relations Board, and that for this reason the plaintiffs in intervention are not entitled to intervene for the purpose of securing the enforcement of the order made herein by said National Labor Relations Board, and said Board is the exclusive authority to institute and prosecute proceedings for a decree of this Court enforcing an order of said Board.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the plaintiffs in intervention have no interest in the subject matter of the order made by the National Labor Relations Board herein or in the enforcement thereof until such time as this Honorable Court decrees its en-

forcement or denies such enforcement or modifies said order.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the intervention of said plaintiffs in intervention is premature, and that they have no right or interest cognizable by this Honorable Court or any other court until such time as this Court shall have made and entered its final order herein.

4. Answering the allegations of Paragraph V of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph V of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph V, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrate the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

5. Answering the allegations of Paragraph VI of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VI of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VI, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence, amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph VI.

6. Answering the allegations of Paragraph VII of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VII of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VII, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner

Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

Wherefore, Petitioner prays that said Complaint in Intervention be dismissed.

Dated: San Francisco, California, February 28, 1947.

PHILIP S. EHRLICH,
BARTLEY C. CRUM,
R. J. HECHT,
Attorneys for Petitioner and Defendant in Intervention.

State of California,
City and County of San Francisco—ss.

R. J. Hecht, being first duly sworn, deposes and says:

That he is one of the attorneys for Petitioner and Defendant in Intervention, Colgate-Palmolive-Peet Company, a corporation; that he has read the foregoing Answer to the Complaint in Intervention, and knows the contents thereof; the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those

matters he believes it to be true; he makes this verification on behalf of Petitioner and Defendant in Intervention for the reason that there is no officer thereof in the City and County of San Francisco, State of California, authorized to verify said Answer.

R. J. HECHT.

Subscribed and sworn to before me this 28th day of February, 1947.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed March 1, 1947.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1372

In the Matter of:
COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS UNION, AFL

San Francisco, California.
Monday, February 4, 1946.

Pursuant to notice, the above-entitled matter came on for hearing at 2:00 p.m.

Before: Horace A. Ruckel,
Trial xaminer.

Appearances:

Wallace E. Royster, 1095 Market Street, San Francisco, California, appearing on behalf of the National Labor Relations Board.

Mathew O. Tobriner and Jonathan H. Rowell, 1035 Russ Building, San Francisco, California, appearing on behalf of International Chemical Workers Union, AFL, Petitioner.

Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union, No. 6, International Longshoremen's and Warehousemen's Union, CIO, Intervenor.

R. J. Hecht and Bartley C. Crum, 2002 Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company, Respondent. [2*]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

This is a hearing in the matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, AFL, Case No. 20-C-1372.

The Trial Examiner appearing for the Board is Horace A. Ruckel, R-u-c-k-e-l.

I have here the following appearances for the record:

Mr. Wallace E. Royster for the Board; Messrs. Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, for Warehousemen's Union, Local 6, ILWU; Mr. Matthew O. Tobriner and Jonathan H. Rowell, appearing for United Chemical Workers Union.

Mr. Howell: That is the International Chemical Workers Union, sir.

Trial Examiner Ruckel: It is "United" down here.

Mr. Rowell: Is it? That is not right.

Trial Examiner Ruckel: The Petitioner; and for the Respondent, Mr. R. J. Hecht.

Mr. Hecht: And may it please the Examiner, Mr. Bartley C. Crum is also of record for the Respondent.

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* Page numbering appearing at top of page of original Reporter's Transcript.

Trial Examiner Ruckel: Mr. Bartley C. Crum?

Mr. Hecht: Crum, yes.

Trial Examiner Ruckel: Are there any other appearances [4] which should be entered? (No response).

Just a few simple instructions to the parties.

An original and four copies of any pleadings filed during the course of the hearing should be filed with the Trial Examiner. It will not be necessary to take an exception to every adverse ruling, but an automatic exception will be allowed you, and upon appropriate motion and order an objection and exception may be permitted to stand to an entire line of testimony.

At the conclusion of the hearing the parties may, if they wish, request time of the Trial Examiner within which to file briefs, and upon request being made the Trial Examiner will indicate the time.

The parties may also, if they wish, argue orally before the Trial Examiner.

Are there any motions at this time by any of the parties?

Mr. Hecht: Mr. Examiner, I don't know whether this is a motion exactly, but we filed our answer within the time allowed. However, unfortunately the authorized officer of the company did execute the affidavit called for by the rules but did not sign elsewhere the answer.

So may we have the answer to allow him to sign it where indicated and return it tomorrow to be considered filed, as having been filed January 31, 1946? [5]

Trial Examiner Ruckel: It may be so considered. Do you have the formal pleadings, Mr. Royster?

Mr. Royster: Yes, Mr. Examiner.

I offer as Board's Exhibit 1(a) the Second Amended Charge in this proceeding, a writing which consists of two pages;

As Board's Exhibit 1(b) the Complaint;

As Board's Exhibit 1(c) Notice of Hearing;

Board's Exhibit 1(d) an Affidavit of Service of Notice of Hearing and Complaint;

Board's Exhibit 1(e) a Request for an Order Extending Time to Answer Complaint, filed by the Respondent; and

Board's Exhibit 1(f) the Order Extending Respondent's Time Within Which to Answer.

I believe also that I shall offer as Board's Exhibit 1(g) the Answer filed in this proceeding by the Respondent on January 31. And he may make arrangements, I assume, to have the signature affixed thereto.

Mr. Hecht: Yes.

(Thereupon, the documents above referred to were marked Board's Exhibits Nos. 1(a) through 1(g), inclusive, for identification.

Trial Examiner Ruckel: Any objection to the offering of the Board?

(No response.) [6]

Without objection, Board's Exhibit 1 may be received in evidence.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 1(a) through

1(g), inclusive, for identification, were received in evidence.)

Trial Examiner Ruckel: Do you have any other formal papers to file, Mr. Royster?

Mr. Royster: No, Mr. Examiner, I do not.

Trial Examiner Ruckel: I haven't had an opportunity to read the Answer. We will recess for five minutes to permit me to read the Answer of the respondent.

(A short recess was taken.)

Trial Examiner Ruckel: The hearing will convene, please.

Before we call the first witness is there any other motion by any of the parties?

Mr. Edises: Mr. Trial Examiner, I represent the International Longshoremen's and Warehousemen's Union, Local 6, and while we are, I believe, named in the Complaint and also in the charge, we have not filed a formal motion to intervene.

Is such a motion desired by the Trial Examiner, or will our appearance be sufficient without such formal intervention?

Mr. Rowell: Well, Mr. Examiner, I wish to enter a [7] formal objection to allowing intervention by the CIO Union, either orally or in writing.

I believe you have read the formal exhibits in the case, and the case involves only a charge by the charging union against the respondent company, which is now being prosecuted by the Labor Board. I fail to see that the International Longshoremen's & Warehousemen's Union has any interest or right

in the case at all. It will extend the hearing, it will exceedingly complicate the possibilities of settlement, and I think there may be some possibility of settlement between the Company and the charging union and the Labor Board. And the intervention of the CIO, if only for the purpose of being able to cross examine the witnesses, would, of course, not be objectionable, but if they are going to be one of the formal parties to the case the case will be extremely long drawn out, and it will be impossible to settle it. Likewise, I think they have no right to appear when the sole charge is against the company.

Mr. Edises: I would like to say in reply to what Mr. Rowell has said, Mr. Examiner, that the evidence will show that the dismissals of the employees involved here were pursurant to a closed-shop contract between the company and the International Longshoremen's & Warehousemen's Union, Local 6.

In the event a formal motion to intervene is required, [8] we will file one, and it will allege the existence of this contract to which we are now parties, and which is presently in force.

Any relief granted the charging union would, of course, involve both the enforcement and validity of our contract to which we are a party. So for that reason alone we have a substantial interest in appearing and intervening in this case.

I regret the fact that Mr. Rowell apparently feels that settlement would be rendered more difficult by our presence. Nevertheless, we do intend to appear.

Mr. Royster: Well, Mr. Examiner, the Board

also opposes the intervention of the ILWU in this proceeding. The complaint does not attack the contract which the ILWU allegedly is party to with the company. Under the terms of the complaint no order of the Board could issue which would attack that contract, or render it in any wise inoperative. The fact that a contract does exist is set forth affirmatively in the company's answer, and whatever defense to the company's actions that contract may constitute is a matter for the company to raise and to show by way of evidence.

I don't believe that the ILWU is a proper or a necessary party to this proceeding.

Mr. Hecht: Mr. Examiner, to the contrary, I believe that the ILWU is a necessary party to this controversy. [9] The effect of an order made by the Board reinstating these men to their employment would be, in fact, a violation of the contract which we have affirmatively pleaded in our Answer, and if we were to reinstate these men pursuant to the of this court, I mean this Board, (pardon me), we would find ourselves faced with a lawsuit in the County of Alameda and the Superior Court asking for the specific enforcement of this contract, or for damages. And I believe no controversy involving this contract can be settled without the necessary presence of the representatives of the ILWU.

Mr. Edises: May I add in addition, in the Cowell Cement Company-Portland case the Board was reversed by the Circuit Court of Appeals for doing that very thing, refusing participation to a party to a contract subject to which certain discharges

took place, and that case was then retried by the Board, in spite of the fact that months had intervened, in fact, years had gone by. And I certainly don't want to put the Board to that necessity in this case.

Mr. Royster: Well, I appreciate Mr. Edises' concern for the Board. However, the fact is that in the Cowell case the situation was clearly distinguishable. The Cowell case consisted of 8(1) 8(3) and 8(5).

The gravamen of the charge, of the Complaint, I should say, was that the company unlawfully was refusing to bargain [10] with the charging union, and also as a part of its plan to refuse to bargain had entered into a closed-shop with another union. It is true that the Board erroneously failed to name the contracting union in its complaint, and for that reason the enforcement failed initially, and upon an amended charge and complaint a subsequent hearing was held at which time the contracting union was made a party to the proceeding and a final result obtained.

It is different here. There is no attack upon the ILWU contract, we are not trying to set it aside, we don't say it is invalid. We merely say that the company performed certain acts which are in violation of the National Relations Act, namely, that they discharged certain employees because of their union activities.

Mr. Hecht: Mr. Royster, do you maintain——

Trial Examiner Ruckel: Well, it does affect their contract.

Mr. Royster: Well, it affects the contract perhaps to the extent that any statute affects a contract, Mr. Examiner. They are all made in the light of the existing statutes and of the power of the government to pass other statutes which may affect the rights of the parties.

Trial Examiner Ruckel: Well, it affects a little more closely than that.

What was the situation in the Rutland Court case, do [11] you recall?

Mr. Royster: Well, the Rutland Court case, there a contract, if I recall it correctly, was sought to be set aside by the Board. It was a contract that had been entered into at or about the time of, or just prior to the discharge of the alleged 8(3's). It was a contract which succeeded one which had been in effect for about a year.

Trial Examiner Ruckel: And for that reason your contention would be that both parties were joined?

Mr. Royster: Yes.

Trial Examiner Ruckel: Of course, counsel for the petitioning union stated that he has no objection to the Longshoremen's Union participating in the hearing, and, of course, they are entitled to do that. Their appearance is on file. I am not quite clear, if they would have the privilege of participating in the examination of witnesses, how it would take any more time if they were joined as parties. I don't think it follows they would take more time than they otherwise would.

Can you clear me up on that, sir?

Mr. Rowell: Well, that may be so in one way, your Honor, except that the issues would be more limited. If the CIO is privileged to call its own witnesses, and to go into issues which are not germane to the proceeding as it stands now, the proceeding will be drawn out. [12]

The point that I am urging strongly, however, is that I feel that this case can be settled rather quickly if it is formally ruled that the CIO has no interest in this proceeding, and that the order sought here, namely, reinstatement with back pay of these individuals has nothing to do with the union at all, with the CIO union, but is a matter between the parties and the company.

Mr. Hecht: May I dispel that, Mr. Examiner? The company will not even attempt thinking of a settlement if the intervening union is not granted its motion because the company would be bound and the intervening union would not be bound by any settlement or order of this Board if they are not permitted to intervene.

Mr. Rowell: Well, that is a question of law that we haven't looked up yet, Mr. Hecht.

Mr. Edises: It occurs to me that Mr. Rowell's motion is based on what might be called a point of expediency. I, of course, would like to see a settlement of any case, but a settlement is not the most important thing. The important thing in a case of this kind, or any other case, is that the determination be on sound, legal grounds. I think we are entitled to have our day in court.

Mr. Royster: Mr. Examiner, just one more point, and that is this: In the event the ILWU is permitted to intervene here, I think that the intervention should at least be limited [13] so that it may offer evidence or examine on matters which affect its interest. I don't believe that the ILWU should be permitted to intervene to supplement the company's defense, for example.

Trial Examiner Ruckel: Oh, well, no. I think that would stand to reason, I mean in this hearing, regardless of what their interests might be otherwise, in this hearing the interest of the respondent and the interest of the CIO union are similar, if not identical. The evidence that would affect one would affect the other. I would anticipate that if the CIO were permitted to intervene that it would be to protect the record primarily and not with the expectation that they would call witnesses which otherwise would not be called, because a company witness in this case is, by reason of the situation, a CIO witness also.

Mr. Edises: Well, we would have to respectfully dissent from that, Mr. Trial Examiner. We cannot accept the position at all that the company's presentation of its case would thereby establish the position of the ILWU. We, it is true, are parties to a contract with the company, but we are a bona fide labor organization dealing at arm's length with the company in matters of collective bargaining.

Trial Examiner Ruckel: I was careful to say in this instance by reason of the contract your interests

in, shall we say, defeating the complaint brought by the Board are [14] similar?

Mr. Edises: Yes, but I hope I don't understand you to mean that we are to be precluded from pursuing any relevant line of defense simply because it doesn't happen to conform to the company's own pattern, or because the matter may have been touched on in some degree in the company's own presentation. That would be foreclosing us of our right.

Trial Examiner Ruckel: I said I would expect that the witnesses called by one would not be duplicated by witnesses called by the other. Of course, if you are made a party to the case it is an empty gesture if you are not permitted to enter testimony and evidence in your own behalf.

Mr. Edises: I am sorry. I misunderstood you.

Trial Examiner Ruckel: But I would expect that it would be reduced to a minimum rather than a maximum.

Mr. Edises: Well, I accept that formulation.

Trial Examiner Ruckel: If the company has adequately established a point by calling one witness I wouldn't expect you to reestablish the point by calling an additional witness.

Mr. Edises: Well, that is quite agreeable. I certainly accept that.

Mr. Hecht: That is agreeable.

Trial Examiner Ruckel: I am not quite clear, gentlemen, how the admission of the CIO could take more time than [15] it would otherwise take. I admit that the statement that there might be a

chance of settling the case is always very appealing to the Trial Examiner, particularly one far away from headquarters. It seems to me that the time taken would be little, if any more, than would be taken anyway in participation of cross examination of witnesses. I am afraid that the case might be prejudiced, not merely prejudiced to the CIO but prejudiced to the other parties unless the CIO were permitted to intervene as a party in the case.

I am aware, now that counsel has refreshed my memory, that the two other cases mentioned were cases which affected directly the contract held by the competing labor organization in the plant. This contract is not affected directly but it is affected indirectly, it seems to me, that is, the effect upon the contract could be very substantial if the Board were to make a certain kind of order.

If the ILWU will prepare a petition to intervene I have indicated that I think it should be granted. It will not be necessary to do that before tomorrow. In the meantime your rights will not be prejudiced.

Mr. Edises: That will be satisfactory.

Trial Examiner Ruckel: Are there any other motions by the parties?

(No response.)

Call the first witness, Mr. Royster, for the Board.

Mr. Royster: Oh, Mr. Examiner, before I call a witness I would like to read a proposed stipulation.

Trial Examiner Ruckel: Yes.

Mr. Royster: The answer of the company admits the allegation of the complaint with respect to commerce. However, I would like to expand that just a little bit by adding a few figures, and I propose this stipulation: That Colgate-Palmolive-Peet Company is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas, and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin.

During 1944 the gross sales of the company at its Berkeley plant, the only plant involved in this proceeding, were in excess of $1,000,000, and the total sales to customers located outside the State of California amounted to more than 25 per cent of the gross sales.

During the same period raw materials having a value in excess of $1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from points outside the State of California.

Mr. Hecht: It is so stipulated.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: The record may so show. [17]

Are there any other stipulations?

Mr. Royster: Yes, Mr. Examiner.

I propose this stipulation to the parties: That International Chemical Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees

of the company, and is a labor organization within the meaning of Section 2, Subdivision 5, of the Act.

Mr. Rowell: So stipulated.

Mr. Edises: We will so stipulate.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: Does the company and respondent stipulate also?

Mr. Hecht: Yes.

Mr. Royster: I propose further by way of stipulation that Warehousemen's Union, Local 6, International Longshoremen's & Warehousemen's Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the company and is a labor organization within the meaning of Section 2, Subsection 5, of the Act.

Mr. Rowell: We will stipulate to that.

Mr. Edises: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster: That is all the stipulations I have. [18]

Mr. Hecht: Mr. Royster, might it be stipulated too that the local of the ILWU who presently has a collective bargaining agreement with the respondent is not in any sense of the word, as used by the Board in its decision, a company-dominated union?

Mr. Rowell: Well, I don't think that it is within the issues of the case.

Mr. Edises: I don't think it is necessary to so stiplate. It is an affiliate of the International Longshoremen's & Warehousemen's Union and of the CIO.

Mr. Royster: There is no contention to that effect.

Mr. Hecht: There is no contention of any domination?

Mr. Royster: No, sir.

Mr. Hecht: That is fine. That is all I want.

Trial Examiner Ruckel: Are there any further suggested stipulations?

Mr. Royster: I have no further stipulations.

Trial Examiner Ruckel: Call the first witness.

Mr. Royster: Mr. Wood.

Mr. Edises: Mr. Examiner, I would like to object to the calling of this witness, at least at the present time. I presume that since he is a representative of the defendant, an officer of the defendant company, he would be called in the nature of an adverse witness under something similar to a state procedure which entitles a party to call an adverse [19] witness. However, it seems to me that the better practice is to require the plaintiff, or the moving party, to first present such testimony as he may have through his own witnesses rather than proceeding through adverse witnesses. And I know that that is the practice which is followed by many courts.

I would propose for that reason that the Board be required before questioning this defendant to proceed affirmatively in the presentation of its own case.

Trial Examiner Ruckel: Well, I don't think there can be any objection to the Board calling anybody it wants to as its own witness, including an

official of the Company. I have no idea what the nature of the examination may be. It may merely be a stereotype question as to the physical set-up of the plant and so on. I think there can be no possible objection. Anyway, I think the objection should be made to a particular question and the materiality of the concrete question and not to the procedure.

Objection overruled.

CHARLES WOOD,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name, please?

A. Charles Wood. [20]

Q. And where do you live, Mr. Wood?

A. 9 West Parnassus Court in Berkeley.

Q. What is your occupation?

A. Purchasing Agent for the Colgate-Palmolive-Peet Company at Berkeley.

Q. And will you give us a brief description of your duties?

A. Well, I buy the material. What you want is that I handle the labor relations? That is what you are looking for, I suppose?

Q. Is it true that you handle the labor relations?

A. I handle the labor relations. I handle them in the Purchasing Department.

(Testimony of Charles Wood.)

Q. Mr. Wood, do you know Mr. Railey, an officer of the Company? A. Yes, sir.

Q. Can you tell us what his position is with the Company?

A. He is Vice President of the Company, in charge of the operations and all business of the Western Division, which includes Kansas City and Berkeley.

Q. Will you give us his initials, please?

A. B. W. Railey.

Q. And do you know a Cecil Carter?

A. Yes.

Q. Will you tell us if he is an employee of the Company?

A. He is what we call a Supervisor. That is comparable to [21] an Assistant Superintendent. He has charge of a part of the plant under the Superintendent.

Q. Does he exercise authority over employees of the Company? A. He does.

Q. In what respect?

A. Well, through the foremen. He does very little with the employees directly, as a general thing.

Q. Does he have authority to promote employees?

A. Well, since the Union came in authority has been somewhat curtailed. When anybody is promoted, why, an argument generally ensues as to who should get the job and so forth, and it is generally settled in the Grievance Committee.

(Testimony of Charles Wood.)

Q. Would that be true also as to discharges?

A. Yes.

Q. Demotions? A. Yes, sir.

Q. Does the Company look to Mr. Carter to make recommendations in such matters?

A. It does.

Q. Now, will you identify a Mr. Altman for me?

A. He is the Superintendent.

Q. And what is his first name?

A. Clifford A. Altman.

Q. And a Mr. Stanberry?

A. His position is comparable to Mr. Carter's, only he [22] doesn't have charge of the same part of the business.

Q. And what is his first name?

A. Don Stanberry.

Q. And Charles Grube?

A. He is foreman of a small department that handles what we call the framing of the soap, that is, the hot soap is poured into big boxes and then the outside stripped off of it before it is sent to be cut into cakes.

Q. Is he what the Company would describe as a working foreman?

A. Well, he is—I would say that he was a cross between a working foreman and a non-working foreman.

Q. About how many employees work in his department?

A. I would have to refer to my notes if we are going all through this.

(Testimony of Charles Wood.)

Q. Could you do that conveniently now?

A. We have got it here already.

(Examining document.) Now, these are the employees that were with us on July 30, 1945, the day that the difficulties began.

There is 16.

Q. To whom is Mr. Grube responsible?

A. Mr. Carter.

Q. To Mr. Carter. Is it part of Mr. Grube's responsibility to make recommendations with respect to the employees who work in his department? [23]

A. Well, yes, the same as any foreman.

Q. Yes.

A. Which may or may not be followed out.

Q. With respect to Mr. Mason, do you know a man of that name?

A. Yes, of course I do. He is Foreman of the Toilet Soap Department.

Q. What is his first name?

A. William Mason.

Q. Does he have any assistant foremen or working foremen under him?

A. He has two foremen under him; two assistant foremen I should say.

Q. Now, Mr. Wood, I show you a writing dated August 20, 1945, and ask you if you can identify it?

A. (Examining document): Yes.

Mr. Edises: May we see it, please?

Mr. Royster: Sure. I am not going to offer it right now.

Q. (By Mr. Royster): Without telling me any-

(Testimony of Charles Wood.)

thing of the content part of the letter, will you tell me what it is?

A. Well, it is a letter I wrote to Mr. Crum at the time we received a letter from the National Labor Relations Board.

Q. And was that letter sent on or about the date it bears? A. I should think so, yes.

Mr. Royster: Very well. Will the Reporter mark this [24] as Board's Exhibit No. 2 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Mr. Royster: I believe that is all, Mr. Wood.

Trial Examiner Ruckel: Cross-examine.

Mr. Rowell: Well, might I ask just one question? I presume it might be part of the direct.

Trial Examiner Ruckel: Yes.

Q. (By Mr. Rowell): Does Mr. Grube have a foreman or an assistant foreman that works under him?

A. No, it is a very small department.

Q. Who is Mr. Ed Bopp? Does he work under him?

A. He is a gang leader in that department.

Q. He works under Mr. Grube?

A. Yes, sir.

Mr. Rowell: That is all.

(Testimony of Charles Wood.)

Cross-Examination

By Mr. Hecht:

Q. Just one question, Mr. Wood.

Mr. Grube is a member of the CIO Union in the complaint? A. Yes.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Royster: In view of Mr. Hecht's questions I have this:

Redirect Examination

By Mr. Royster:

Q. Do other foremen at the plant belong [25] to the CIO Union?

A. We think so. We have never questioned them with respect to it.

Q. You are sure of Mr. Grube, though?

A. Yes.

Mr. Royster: That is all.

(Witness excused.)

Mr. Royster: Frank Marshall.

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

Mr. Edises: Could I ask that the questioning

(Testimony of Frank Marshall.)

be held up for just a moment? I haven't had a chance to examine this statement.

Trial Examiner Ruckel: Will you have an objection to the exhibit?

Mr. Edises: I don't know. I haven't had a chance to examine it yet.

Mr. Hecht: We will have an objection.

Trial Examiner Ruckel: I haven't admitted it yet. I wonder if you might reserve examination of it until our recess, which we will have in 10 minutes or so. [26]

Mr. Edises: All right.

Q. (By Mr. Royster): What is your name?

A. Frank Marshall.

Q. Where do you live, Mr. Marshall?

A. Walnut Creek.

Q. And what is your occupation?

A. Now, or——

Q. Yes.

A. I work for the Shell Chemical Company, in the Shipping Platform.

Q. Were you employed by the Colgate-Palmolive-Peet Company? A. I was.

Q. For what period?

A. From October 28, 1928, to July 30, 1945.

Q. Were you a member of the ILWU?

A. I was.

Q. For what period?

A. From August, 1936, until July 30, I presume.

Q. Of 1945? A. 1945.

Q. You stated that you were a member of the

(Testimony of Frank Marshall.)

ILWU from sometime in 1936 until July 30, 1945?

A. That is right.

Q. Was the labor organization known by any different name during that period? [27]

A. Yes, it originally was the—I originally joined the ILA, and AF of L organization, in 1936. Later it was changed to the ILWU, CIO.

Q. Do you recall about when that change came?

A. 1938, I believe. I am not sure on the date.

Q. Have you held any office in the ILWU?

A. I did.

Q. What office?

A. Chairman of the Steward's Council.

Q. Where?

A. In the ILWU for the year of 1944.

Mr. Hecht: May I have that date again, please?

The Witness: For the year of 1944.

Q. (By Mr. Royster): Well, you state you were Chairman of the Steward's Council. Of what was that Council composed?

A. That Council was composed of the members —of Stewards who were members throughout the whole warehouse industry controlled by the CIO.

Q. It was not confined merely to the Stewards of the Colgate-Palmolive-Peet Company?

A. No; that was the entire local.

Q. How did you get that office?

A. I was elected by the—yes, I was elected in December of 1943 by the members of the Stewards' Council at that time.

(Testimony of Frank Marshall.)

Q. And is it your testimony that you served in that [28] capacity for the year of 1944?

A. That is correct.

Q. Now, do you know B. W. Railey?

A. I do.

Q. There has been testimony that he was Vice President, or is Vice President of the Respondent.

Did you have a conversation with Mr. Railey in July, 1945? A. I did.

Mr. Hecht: Mr. Royster, I think it will conserve a little time if you will have the witness specify the time, place, persons present.

Mr. Royster: I can't do that, Mr. Hecht, without asking the questions and you certainly have anticipated me.

Mr. Hecht: Yes.

Q. (By Mr. Royster): Will you state as nearly as you can the date in July 1945 when this conversation took place?

A. It was approximately July 20th.

Q. And where did it take place?

A. It was just outside of the shipping office, what is known as "L" Building of Colgate-Palmolive-Peet Company, Berkeley.

Q. And who was present?

A. Just Mr. Railey and myself.

Q. And what was the conversation?

A. I asked him if the contract of the Union was to be signed [29] that the Stewards of Colgate-Palmolive-Peet be present, and he asked me why,

(Testimony of Frank Marshall.)

and I said that we expected some trouble to arise at that time. And he said he would.

Q. Now, what contract have you reference to?

A. The contract with the ILWU, Warehousemen.

Q. Do you know of a meeting of Respondent's employees on July 26, 1945? A. I do.

Q. Was such a meeting held? A. It was.

Q. Where was it held?

A. Pete's Rendezvous, Third and Broadway, Oakland.

Q. Who arranged this meeting?

A. William Sherman.

Q. Do you know what the purpose of the meeting was?

A. It was to discuss working conditions, and a general discussion of the plant conditions at Peet's, Colgate-Palmolive-Peet.

Q. Who attended the meeting?

A. Members—employees of Colgate-Palmolive-Peet.

Q. Did you attend? A. I did.

Q. Can you state about how many other employees attended?

A. About 28 to 30, somewhere in that neighborhood.

Q. How did the employees who attended this meeting know [30] that it was to be held, if you know, how they found that out?

A. Well, it was just passed by word of mouth, and a few of the members got together—they had

(Testimony of Frank Marshall.)

on different occasions before—got together for a dinner.

Q. Did you invite anyone to attend?

A. Yes, I did.

Q. Did you discuss this meeting with any labor organization, that is, before it was held?

A. Before it was held?

Q. Yes. A. Yes.

Q. With whom?

A. Officers of District 50, the Mineworkers Union, UMW.

Q. Well, tell us what happened at the meeting, this meeting of July 26?

A. We spoke of—we discussed working conditions at the plant and made arrangements at that time to hold a meeting where all employees who wished to could attend at a later date.

Q. Do you know Harold Lonnberg?

A. I do.

Q. Did he attend this meeting of July 26?

A. He did.

Q. Do you know Clyde Haynes? A. I do.

Q. Did he attend the meeting of July 26?

A. He did.

Q. Do you know David Luchsinger?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Do you know William Sherman?

A. Yes.

Q. Did he attend this meeting? A. Yes.

(Testimony of Frank Marshall.)

Q. Do you know Edwin Thompson?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Now, you say that there was a decision reached at this meeting that a subsequent meeting be called? A. Yes.

Q. Was the purpose of this second meeting decided? A. Yes.

Q. Will you tell us what it was?

A. Well, it was decided that this second meeting would be for anyone who wanted to attend, that is, any member of Colgate-Palmolive-Peet, shall we say, employes of Colgate-Palmolive-Peet. The first meeting was very small, as I stated before. [32]

Q. Was there any decision reached at the July 26 meeting with respect to any question to be put to the employees at the second meeting?

A. I don't remember that.

Q. Now, was there a subsequent meeting held?

A. A later meeting.

Q. Yes. A. Yes, on July 30, 1945.

Q. Now, were employees advised that this meeting of July 30 would be held? A. Yes.

Q. How were they advised?

A. By notices posted around the plant.

Q. And did you see any of those notices?

A. Yes.

Q. Can you tell us where they were posted?

A. They were posted on the three time clocks, one in "A" building, one in "L" building, and one

(Testimony of Frank Marshall.)

in the "TA" warehouse, the toilet article workers warehouse.

Q. Now, with respect to the bulleting board in "A" building, can you tell us where that is situated?

A. It is directly over the time clock through which all the hourly employees pass by twice a day; at least once a day.

Q. How is it situated with respect to any of the company's [33] offices?

A. It is within 30 feet of the exit, I would say, of Mr. Altman's office, and all the officers are in this area in the "A" building.

Q. What is Mr. Altman's position at the plant?

A. Plant Superintendent.

Q. Did you post any of these notices?

A. I did.

Q. When did you post them?

A. At quarter to one on July 28th, which was a Saturday, 1945.

Q. Were you in Mr. Railey's office on July 30th?

A. Not Mr. Railey's office, no.

Q. Were you in any other of the Company's offices? A. Yes, Mr. Altman's office.

Q. Mr. Altman's office? A. Yes.

Q. That was on July 30th. About what time of day? A. About two p.m.

Q. And who else was there?

A. Mr. Altman and Mr. Railey, Mr. Heide, Mr. Duarte.

(Testimony of Frank Marshall.)

Q. Can you tell me who Mr. Heide and Mr. Duarte are?

A. Mr. Heide is the second Vice President of the Warehouse Union; Mr. Duarte is Business Agent. Mr. Gonick is Business Agent, and Mr. Gleichman, I don't know what he is. [34]

Q. Was Mr. Luchsinger there?

A. Yes. Oh, yes. The five Stewards were there, too; Mr. Luchsinger, Mr. Smith, Mr. Marshall (myself), Mr. Clyde Haynes, and Sanford Moreau.

Q. Well, did you have a conversation?

A. Yes. We were—Mr. Riley told us that there was some union trouble and that he would have to let us go until such time as we were straightened out with the union. At that time we were handed——

Trial Examiner Ruckel: Now, what do you mean by "us." You say "us."

The Witness: The five Stewards.

Trial Examiner Ruckel: The Stewards present?

The Witness: Yes, the five Stewards present which I named.

We were then handed copies by the officials of the Warehouse Union stating that there were charges against us, that we were no longer in good standing with the Union, and we would have to be—or we would have to stand trial, or something of that nature.

Trial Examiner Ruckel: Who handed those to you?

The Witness: Mr. Duarte.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Who is he?

The Witness: An official of—Business Agent of ILWU.

Q. (By Mr. Royster): Well, did you say anything? [35] A. No, no.

Q. Was there any conversation about a contract?

A. There was by Mr. Duarte, Business Agent for the ILWU, stating that we were out of good standing with the Union and that they were upholding the contract.

Mr. Railey did most of the speaking, telling us that he would have to leave us go.

Trial Examiner Ruckel: What was his whole conversation so far as you can recall?

The Witness: Well, his conversation was based on the conversation that he had previously with the officials of the Union where they pointed out that——

Trial Examiner Ruckel: You mean he said that, he said that he had a conversation with officials of the Union?

The Witness: That is right.

Trial Examiner Ruckel: And that they had pointed out——

The Witness: That they had pointed out that we were out of good standing with the Union, and due to terms of the contract, why, they had to leave us go.

Trial Examiner Ruckel: Did he say when he had had that conversation?

(Testimony of Frank Marshall.)

The Witness: It was just prior to our entering there.

Trial Examiner Ruckel: Did he say so?

The Witness: Prior to 2 P.M.

Trial Examiner Ruckel: Did he say so? [36]

The Witness: I am pretty sure he mentioned that.

Q (By Mr. Royster): Well, what did you do after that, Mr. Marshall?

A. We left Mr. Altman's office and went over to the smoking room.

Q. Now, when you say "we," to whom do you refer?

A. I am referring to the five Stewards.

Q. Whose names you have stated?

A. Whose names I have mentioned. We went to the smoking room, which is in the other building, called "L" building, and sat down and discussed the situation.

Q. Now, this conversation and occurrence in Mr. Altman's office took place on July 30, did you testify? A. That is correct.

Q. Now, did you attend a meeting on that day?

A. Yes.

Q. And where was that meeting held?

A. It was held at the Finnish Brotherhood Hall.

Q. In Berkeley?

A. On Chestnut Street, Berkeley.

Q. And where is that with relation to the Company's Plant?

(Testimony of Frank Marshall.)

A. Approximately a mile and a half from the plant.

Q. What time of day was this meeting held?

A. 4:15 P.M.

Q. Is this the meeting to which the notice which you posted [37] on July 28th referred?

A. That is correct.

Q. By whom was it attended?

A. It was attended by approximately 270 members or employees of Colgate-Palmolive-Peet.

Q. Well, will you tell us what took place at this meeting?

A. The membership elected four officials from that body to represent them and to return to Colgate-Palmolive-Peet the following day and try to establish the Stewards back on the job, the five Stewards.

Q. Do you recall the names of the four who were elected?

A. Lincoln Olsen, William Sherman, Harold Lonnberg, and Edwin Thompsen.

Q. Was there any action taken at this meeting with respect to the ILWU?

A. Yes, there was.

Q. And what was the action?

A. That we break relations with the ILWU, and that we form the Employees Welfare Association as a temporary organization to handle our business for us, and seek affiliation with some other strong international.

Q. Now, when you say "Employees Welfare As-

(Testimony of Frank Marshall.)

sociation" are you referring to Colgate-Palmolive-Peet Employees Welfare Association?

A. No. [38]

Q. Will you state the purpose of the Employees Welfare Association?

Mr. Edises: I will object to that on the ground that if it is the kind of association that its name imports there must be some document, some charter, constitution, or other document which would set forth its purposes, and which would be the best evidence of those purposes.

Trial Examiner Ruckel: Well, let's find out if there were any.

Did you ever adopt a constitution?

The Witness: No.

Trial Examiner Ruckel: Or by-laws?

The Witness: No.

Trial Examiner Ruckel: No by-laws?

The Witness: No.

Trial Examiner Ruckel: You were never chartered, I suppose, by the State?

The Witness: No; it was just a temporary organization.

Trial Examiner Ruckel: Just an association?

The Witness: Just an association.

Mr. Edises: May I add to my objection that if that is the case then this witness has not been qualified. There has been no foundation to show that he is in a position to indicate the purposes of the association.

Trial Examiner Ruckel: Well, he was one of

(Testimony of Frank Marshall.)

these people [39] present at this meeting. He can give us the purpose of the organization as he understands it.

Mr. Edises: Mr. Examiner, I don't want to be technical, but it seems to me the question ought to go to whether there was any official action taken or any resolution. Otherwise it is just a statement of this witness as to what he believes the purposes of the association were.

Trial Examiner Ruckel: You may proceed.

Mr. Royster: Well, I can ask him that question, Mr. Edises.

Q. (By Mr. Royster): Was there any action taken by the persons who attended this meeting on July 30 with respect to the Employees Welfare Association? Just was there any such action?

A. Yes, there was.

Q. And what was the action?

A. Well, the action was that we break relations with ILWU.

Trial Examiner Ruckel: Well, was there a resolution proposed to that effect from the floor?

The Witness: From the floor, yes.

Mr. Hecht: Mr. Royster, I would like to know who the witness means when he refers to "we."

Mr. Royster: Well, I didn't get the "we" the last time, Mr. Hecht.

Mr. Hecht: Yes. He went on to say, "we" decided to [40] break relations with the ILWU.

Mr. Royster: Well, I assume——

The Witness: When I say "we" (if I may in-

(Testimony of Frank Marshall.)

terrupt)—when I say "we" I mean the Employees Welfare Association.

Q. (By Mr. Royster): Are you talking about the people who attended this meeting on July 30th?

A. I am; that is right.

Q. I believe you had started to testify that in response to or acting upon a resolution which had been proposed to the floor you voted to withdraw from the ILWU.

Is that correct? A. That is correct.

Q. And the further action I don't believe you have stated.

A. Well, the first resolution was to withdraw from the ILWU.

Q. Now, was that put to a vote?

A. That was put to a vote.

Q. What was the result of that vote, if you know?

A. That was a unanimous vote to withdraw.

Q. All right.

A. The second was to elect officials, temporary officials. They were elected. I stated their names.

Q. Well, now, you stated the names of four individuals, who, if I understood your testimony correctly, were to go to the Company and seek the reinstatement of the Stewards.

A. That is correct. [41]

Q. All right. Now, was there a resolution with respect to Employees Welfare Association?

A. Yes, there was.

Q. And how was that proposed?

(Testimony of Frank Marshall.)

A. That was by one of the members who attended the meeting, one of the members—one of the employees of Colgate-Palmolive-Peet.

Q. Proposed a resolution?

A. Proposed a resolution.

Q. And what was the resolution?

A. So as not to confuse it, the first resolution came from the floor to break relations with ILWU. The second proposal was to form the Employees Welfare Association. It was advertised as such on the notices put up in the plant.

Q. Now, was the second resolution put to a vote?

A. It was.

Q. Do you know the result of that vote?

A. It was a unanimous vote.

Q. In what respect was it unanimous, for or against the formation?

A. A unanimous vote for forming the Employees Welfare Association.

Q. Now, what is the purpose of the Employees Welfare Association?

Mr. Edises: Well, there again my objection is that the [42] question should be whether or not there was any official action, or resolution taken. Otherwise it is only an opinion and conclusion of this witness.

Trial Examiner Ruckel: He may answer.

The Witness: Will you repeat the question, please?

Q. (By Mr. Royster): What is the purpose of the Employees' Welfare Association?

(Testimony of Frank Marshall.)

A. It was set up as a temporary organization—maybe that is the wrong word to use—temporary group of workers who elected their officials, who were to bargain, who were to seek affiliation with some other strong international.

Q. Did the Employees Welfare Association have any purpose or any function to perform, as you understood it, until there may have been affiliation with a, as you put it, strong international union?

A. No. As I stated, it was merely a temporary organization to hold the membership together until such time as we could affiliate with a stronger international.

Trial Examiner Ruckel: We will recess for 10 minutes.

Mr. Royster: All right.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Mr. Marshall, you testified about a meeting of employees on July 30. Was there another meeting of Respondent's Employees?

A. Yes, there was, on July 31, the following day.

Q. And where was this meeting held?

A. At the Finnish Brotherhood Hall.

Q. And about what time of day?

A. Around noon, I believe.

Q. And by whom was it attended?

A. By the employees of Colgate-Palmolive-Peet Company.

Q. Did you attend this meeting? A. I did.

(Testimony of Frank Marshall.)

Q. And will you tell us what took place at the meeting?

A. There was a report back by the four elected officials of the Employees Welfare Association telling the Employees Welfare Association of the negotiations which had been talked about the company, officials of Colgate-Palmolive-Peet. And the results were that the Colgate-Palmolive-Peet Company could not put the five Stewards back to work.

Q. Did Mr. Railey attend this meeting?

A. Yes, he did.

Q. He was invited there?

A. He was invited there, yes.

Q. Did he speak?

A. Yes, he did. He was called there mainly to show him what action the employees intended to take, and he told us that there was not very much he could do about it. Several proposals were made to him. He spoke to us for some half hour, [44] about a half hour. And at that meeting the employees decided to hold a continuous meeting until such time as the five Stewards could be put back to work. A vote was taken in the presence of Mr. Railey, a standing vote, showing him that the membership was directly behind the five men who had been discharged from the plant, Colgate-Palmolive-Peet.

Q. Now, you spoke of a continuous meeting. Did this meeting continue on the first day of August?

A. No, I believe it was August 2nd.

(Testimony of Frank Marshall.)

Q. All right, did you attend the meeting on August 2nd? A. I did.

Q. Can you tell us what happened during that meeting?

A. No progress had been made between the four elected officials of the Welfare Association, Employees Welfare Association, and on August 2 the AFL Chemical Workers Union had been contacted and at that time the Employees Welfare Association was dissolved and the ~~A. F. of L. Chemical~~ Workers Union was to be the bargaining agent for the employees of Colgate-Palmolive-Peet.

Mr. Hecht: I object to that statement (it is a conclusion of the witness), and ask that it go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Royster): Now, you spoke of the dissolution——

Trial Examiner Ruckel: That is, that part of the answer may be stricken, which was that the Chemical Workers [45] Union was to be the representative of the employees of Colgate-Palmolive-Peet.

Q. (By Mr. Royster): You spoke, Mr. Marshall, of the dissolution of the Employees Welfare Association. How was that dissolution brought about?

A. That was through a motion from the Employees Welfare Associotion to dissolve the Employees Welfare Association.

Q. Was that motion put to a vote?

A. That motion was put to a vote and it was

(Testimony of Frank Marshall.)

unanimously accepted by the said members of the Employees Welfare Association.

Q. Now, you mentioned the International Chemical Workers Union, A. F. of L.

Was there any motion with respect to that organization considered at this meeting of August 2?

A. There was a motion, there was a motion put on the floor at that meeting that we join the Chemical Workers Union, A. F. of L.

Q. And was that motion put to a vote?

A. It was. It was a unanimous vote by the membership.

Q. To do what?

A. To join the Chemical Workers Union, A. F. of L.

Q. Did you join the Chemical Workers Union?

A. I did.

Q. Have you returned to work for the Respondent? [46] A. No.

Q. Have you made any attempt to return to work? A. I did.

Q. When?

A. Oh, approximately August 17.

Q. 1945? A. 1945.

Q. What did you do?

A. I, in company with the five Stewards——

Q. You being one of the five?

A. I being one of the five Stewards, and the four elected officials, which was Thompson, Sherman, Lonnberg—(pause)

Q. Was Olsen in that group?

(Testimony of Frank Marshall.)

A. And Olsen, nine of us, went to Mr. Altman's office and presented ourselves for work. Mr. Wood came to the office immediately after. We told him that we were prepared for work and he said that—Mr. Wood said that he was sorry, that we could not be put back to work. We then asked him if we were discharged. He told us to be very careful about using the word "discharged."

Mr. Hecht: May I hear that again, please?

The Witness: He told us—Mr. Wood told us that we should be careful about using the word "discharged" as the Company had not discharged us, that in the near future some of us would be back to work, and that if we used the word [47] "discharged" it would mean that our insurance benefits and old age pension would be broken off.

Q. (By Mr. Royster): I think you answered this question, but in order to be certain, what answer was finally given you on this occasion with respect to your application for reinstatement?

A. "No."

Mr. Royster: That is all.

Mr. Rowell: Could I ask one of two questions before cross?

Trial Examiner Ruckel: Yes.

Q. (By Mr Rowell): You stated, I think, Mr. Marshall, that you worked at the Colgate-Palmolive-Peet Plant from October 28, 1928, until your severance of employment, shall we call it, on July 30, 1945? A. That is correct?

(Testimony of Frank Marshall.)

Q. Can you tell me what you did, what was your last job there?

A. Stockman for the Shipping Department.

Q. Can you tell me your pay that you got at that time?

A. At that time it was $1.12½ an hour.

Q. What kind of seniority did you have?

A. I had all of my seniority in the Shipping Department at that time.

Q. Both departmental and plant seniority in that plant? [48]

A. That is correct.

Q. So you had a certain status of plant seniority as well as a certain status of departmental seniority?

A. All my seniority with the company was both in the plant and in the department.

Q. Yes. You had departmental seniority from October 28, 1928? A. That is correct.

Q. Were there any employees in that department that had more seniority than you?

Mr. Edises: Well, just a moment.

A. About four.

Mr. Edises: Just a moment.

I object on the ground of irrelevant to the issues.

Mr. Rowell: Well, Mr. Examiner, I am trying to show that these people that were selected had a long employment history there, and there was obviously no reason for their discharge by the

(Testimony of Frank Marshall.)

company except what the charge of the Board in this case alleges.

Trial Examiner Ruckel: Well, there is no contention they were discharged for inefficiency, is there?

Mr. Edises: No such contention in this case that I know of.

Trial Examiner Ruckel: I would prefer to leave this type of evidence out, although as a time-saver sometimes it [49] is preferable to let it in.

Mr. Hecht: May I make a sugestion, Mr. Trial Examiner?

Trial Examiner Ruckel: As far as it affects their back pay——

Mr. Rowell: The first part is back pay.

Trial Examiner Ruckel: The first part affects their back pay, but even then it is academic.

Mr. Edises: It is a matter of compliance.

Trial Examiner Ruckel: Sometimes it is quicker to get it in than to keep sustaining objections. As to the latter part of the question, it appears that the issues are very well drawn here. These men were not let out because they were inefficient.

Mr. Hecht: Mr. Rowell, it might be useful to say at this time we would be happy to furnish the records of the plant with reference to the seniority of the Complainants.

Mr. Rowell: I would be glad to have them.

Mr. Hecht: If it becomes relevant and material to the issues of this hearing.

Mr. Rowell: The only point is that it certainly

(Testimony of Frank Marshall.)

demonstrates the necessity for the National Labor Relations Act in situations like this, where people of long standing seniority who have devoted their entire lives practically to their employment in this company are cut off after all that employment, Now, that is a matter that I think is certainly [50] morally material to the case, but I will desist asking that question.

Trial Examiner Ruckel: The length of their employment is irrelevant. If they are wrongfully discharged we are concerned, even though they have been employed only 24 hours.

Mr. Rowell: All right.

Q. (By Mr. Rowell): Well, Mr. Marshall, the first meeting that you talked about, that was the dinner meeting of July 26, is that right?

A. Yes.

Q. Where you had this group of 29 or 30 people at this dinner? A. That is correct.

Q. Now, among other things, at that meeting was there any action taken with reference to what you were going to do at the next meeting?

Mr. Edises: Now I want to object to this line of questioning because it is all repetitive, it has already been gone over in questioning by the Board's attorney. I submit that the same consideration that applies to us should apply to the charging union.

Mr. Rowell: Certainly. I am trying to fill in the testimony, Mr. Examiner, that is all. I am not going to cover the testimony——

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: You may answer. [51]

A. Well, in general the discussion was the conditions, working conditions that had been going on for the last year or so, and as to just what we should do, outlay the groundwork as to what we should do for the future, and a general discussion of the lack——

Q. (By Mr. Rowell): Well, now, Mr. Marshall——

Mr. Edises: I submit he should be permitted to answer the question.

Mr. Rowell: He is not answering the question.

Trial Examiner Ruckel: Did you finish your answer?

The Witness: I say the lack of cooperation from the officials of the ILWU.

Q. (By Mr. Rowell): But I asked specifically: Were you going to have another meeting after this dinner meeting? I understood you decided to have this July 30 meeting? A. That is correct.

Q. Now, I asked specifically did you decide anything on the July 26 meeting, as to what you were going to do at the July 30 meeting?

A. Well, mainly it was to discuss the conditions, working conditions of the plant itself, what had been going on the past year, and we discussed the United Mineworkers Union.

Q. All right. You discussed one possibility of union affiliation that was the United Mineworkers?

A. That is correct. [52]

(Testimony of Frank Marshall.)

Q. Did you discuss any other possibility of action at that time?

A. No, there was none others discussed at that time to the best of my knowledge.

Q. Did you discuss the formation of any temporary organization? A. Yes, we did.

Q. What was that organization?

A. The Employees Welfare Organization.

Q. In other words, at the July 26 meeting you did discuss the advisability of forming the Employees Welfare Association?

A. We discussed forming the Employees Welfare Association at that time.

Trial Examiner Ruckel: Well, it was not formed at that time?

The Witness: No, it was not formed at that time.

Q. (By Mr. Rowell): Now, at what time of day were you advised by Mr. Railey that you would have to be let go? This was on July 30, I believe you said.

A. That was at 2:00 p.m. on July 30.

Q. Were you told that you were through then?

A. Yes.

Q. Why didn't you finish out the day?

A. Well, after all, we was not going to get paid for it, I guess the best thing to do was leave. [53]

Q. Did they give you your money?

A. No; I got paid for six hours that day.

Q. Was that unusual, to discharge a person in the middle of the day?

(Testimony of Frank Marshall.)

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Now, at this meeting of July 30 when the Employees Association was set up, did you take some action with regard to trying to get those five Stewards back on their jobs, and, if so, what action did you take?

A. Well, the action was not taken by the five Stewards. The action was taken by the——

Q. I mean at the meeting, did the meeting take some action with regard to an attempt to get those Stewards back?

A. Yes. Well, the action was taken by a motion passed by the Employees Welfare Association at that time.

Q. That is right. What was the action?

A. The action was that these four elected officials were to go and negotiate with the company, Colgate-Palmolive-Peet, and seek to reestablish these five men.

Mr. Edises: Mr. Trial Examiner, as I understand it, this is really a continuation of direct examination, is it not?

Trial Examiner Ruckel: That is right.

Mr Edises: Rather than cross. [54]

Well, my notes show that all of this testimony has been gone over and it is purely repetitive.

Mr. Rowell: Your notes are not in the record, Mr. Edises. My notes show there were lacks in the testimony in that regard.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Some of it is repetitious, other isn't repetitious. We do want a complete story. We don't want to repeat it, but we want one that is complete.

You may answer.

The Witness: Will you repeat that question?

Mr. Rowell: I think he answered the question. I have nothing further.

Trial Examiner Ruckel: Cross examination.

Cross Examination

By Mr. Hecht:

Q. Mr. Marshall, do you remember the wording of the notices that you yourself posted on "A" building under the time clock?

A. Yes, I do. I have got a copy of it here if you want it, read.

Q. Yes. May we have it, please?

A. (Handing document) That is just my handwriting (indicating).

Q. Have you a copy of the notices actually posted? A. Not with me, no.

Q. Could you bring one for us to use? [55]

A. I am not sure. I don't know whether I have it with my file or not.

Mr. Hecht: Well, pending the bringing of such a notice I would like to read into the record——

Mr. Edises: May I see it?

Mr. Royster: Maybe we can stipulate what the notice shows. I don't have a copy of it.

Mr. Hecht: Is it agreeable to reading it into the record?

(Testimony of Frank Marshall.)

Mr. Royster: Well, I presume it is the notice which was posted.

Mr. Hecht: Well, subject to correction in the event we can locate one of the notices.

Mr. Rowell: That is all right.

Mr. Hecht: "Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, across from Burbank School, at 4:15 p.m., Monday, July 30, 1945."

Q. (By Mr. Hecht): Mr. Marshall, could you tell us who were the officers of the Employees Welfare Association?

A. William Sherman, Harold Lonnberg, Edwin Thompson.

Q. Only three officers?

A. And Lincoln Olsen.

Q. Olsen also? A. Yes. [56]

Q. What office did Mr. Sherman hold?

A. Chairman at that time.

Q. Chairman. What office did Mr. Lonnberg hold?

A. At what date are you speaking of? Are you speaking of the first——

Q. Well, you have told us, Mr. Marshall, that you formed an Employees Welfare Association, I believe, on July 30, 1945. A. That is correct.

Q. As of that date who were the officers and what offices did they hold?

Mr. Rowell: Well, there has been no testimony they had officers, Mr. Hecht. There was testimony

(Testimony of Frank Marshall.)

they elected the four people to represent the Association to attempt to get those Stewards back. That is all the testimony so far, I believe. He referred to those men as officials.

Trial Examiner Ruckel: There was this committee of four, is that right?

The Witness: That is right.

Trial Examiner Ruckel: Did they subsequently constitute them officers, or become officers at——

The Witness: They were officials of that body of people. They were elected as negotiators to go back and talk with the company.

Q. (By Mr. Hecht): Let me ask you this, Mr. Marshall—maybe I can clarify it this way: In other words, you didn't [57] have any such thing as a President, Vice President, Recording Secretary, Secretary, Business Agent, or Walking Delegate, or any of those things?

A. No, not at that particular date.

Q. And those men were only appointed for the purpose of seeing to it that you might be able to get your employment back in Colgate-Peet, or rather, to have you put back to work there?

A. That is correct.

Q. That was the sole purpose of that committee?

A. That is correct.

Q. Can you tell us, or rather, will you tell me how you knew that the 270 persons that attended the meeting on July 30 were employees of the Respondent?

(Testimony of Frank Marshall.)

A. Well, I would say between the five Stewards we knew practically every face in the plant of the employees.

Q. In other words, you recognized a certain number, I take it? A. That is correct.

Q. And the other five stewards who were present at this meeting, communicated to you that they recognized an equal number of your people and then you arrived at 270 employees?

A. No, I wouldn't say that.

Q. You are not certain of the number of employees there?

A. I did not recognize any stray faces there myself. I [58] personally knew practically every person at Colgate-Palmolive-Peet at that time.

Q. Where were you at the time of the meeting?

A. In the hall.

Q. Where in the hall?

A. Sitting in a chair.

Q. On a stage, a rostrum?

A. No; in the audience.

Q. In the audience? A. Yes.

Q. Did you take toll of the people as they came in through the door?

A. I counted them after.

Q. You counted them after? A. Yes.

Q. And recognized every face as it went out?

A. I did not see any stray faces.

Q. I see. So that in a way this is your opinion as to the number of persons present, and as to

(Testimony of Frank Marshall.)

whether they were or were not employees of Colgate-Peet? A. That is correct.

Mr. Royster: I object to the question as argumentative.

Trial Examiner Ruckel: Well, in your opinion they were all members?

The Witness: To the best of my knowledge all the people [59] in that hall were members of—were employees of Colgate-Palmolive-Peet Company.

Trial Examiner Ruckel: When you say their faces were familiar, you mean they were familiar to you as employees of Respondent?

The Witness: That is correct.

Q. (By Mr. Hecht): How was the vote taken at this meeting, Mr. Marshall?

A. What particular vote are you referring to?

Q. Well, you say that your had a committee of four elected first? A. By a standing vote.

Q. By a standing vote? A. Yes.

Q. And were you able to see the number of people who voted? A. Yes.

Q. How?

A. The Finnish Brotherhood Hall is—I might describe the hall. It has a lower floor and it has a raised bench around the sides of the auditorium, which is about one foot higher than the rest of the seats. From that patricular point I could see the whole hall.

Q. You were on this raised platform around the hall there? A. That is correct.

Q. Are you sure that this vote on this first—the

(Testimony of Frank Marshall.)

appointment [60] to this committee was on an "Aye" or "No" basis? A. No, it was not.

Mr. Rowell: Do you understand the question?

Mr. Royster: Does this assume he has so testified? I understand he has not.

Trial Examiner Ruckel: Was it a "Yes" or "No" vote?

The Witness: It was a standing vote to elect the officials.

Q. (By Mr. Hecht): In other words, the Chairman said, "Those voting in favor will rise"?

A. That is correct.

Q. That is why I am asking you. You are sure that is the way the vote was taken?

A. That is right.

Q. All right. Was it at the meeting of July 30th that the members present or the persons present decided to break relations with the ILWU?

A. That is correct.

Q. At the July 30th meeting?

A. That is correct.

Q. And do you recall who made the resolution?

A. One of the members.

Q. Who? A. I can't recall.

Q. No one you recognized? [61]

A. I didn't see; I didn't even look.

Q. Do you know of your own knowledge whether notice of this resolution was ever given to the company?

(Testimony of Frank Marshall.)

A. Well, I didn't send it. I was told that there was.

Q. Who told you?

A. One of the four elected men there. I don't recall who it was now.

Q. One of the committee of four?

A. One of the committee of four.

Q. When were you told that such notice had been given to the company?

A. Sometime during that meeting, or just after it—now, I don't recall the exact time—of the meeting of July 31.

Q. Sometime afterwards?

A. That is correct.

Q. That is what you were told. Do you know if that notice was in writing?

A. I believe it was a telegram.

Q. A telegram? A. A telegram.

Q. Mr. Marshall, you testified that you were a steward at the time of your removal from employment; is that correct?

A. That is correct.

Q. And you had been active—withdraw that. As a Steward you are a representative of the union and [62] not of the company, is that correct?

A. We are a representative of the employees of Colgate-Palmolive-Peet.

Q. And for how long did you say you had held this position?

A. Three consecutive years, and preceding that on one other occasion.

(Testimony of Frank Marshall.)

Q. Would you say that you were such a Steward in July of 1941?

A. Well, I couldn't recall that date.

Q. Are you familiar with a certain contract that—I won't say "exists"—well, a contract that presently exists between the Respondent and the ILWU dated July 9, 1941?

A. That is correct.

Q. It was your duty as such Steward, was it not, to see that the Company complied with the provisions of that contract?

Mr. Royster: I am going to object to this line of examination, Mr. Examiner, unless counsel for the Respondent will state his purpose. It appears that he is laying a certain background here to show that the witness was not properly performing his duties as a Steward.

Mr. Hecht: That is not the object. I will tell you the object of the question in just a moment.

Trial Examiner Ruckel: You may answer it.

Do you recall the question? [63]

The Witness: No. Will you repeat the question?

Mr. Hecht: I will repeat it.

Trial Examiner Ruckel: All right.

Q. (By Mr. Hecht): Do you recall, or have you knowledge of a contract existing between the respondent and the ILWU dated July 9, 1941?

A. Yes.

Q. And I think when the objection came I had asked you whether it was not your duty to see to

(Testimony of Frank Marshall.)

it that the Respondent complied with the provisions of the contract, as a Steward?

A. That is correct.

Q. And you are familiar with that contract, then, are you not? A. Yes.

Mr. Hecht: Mr. Royster, with your permission, I have here what appears to be a true duplicate of the contract. The original is at my office. And I would like at this time to introduce this copy as our Exhibit, and I will substitute the original tomorrow at the opening of the hearing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m. an adjournment was taken to Tuesday, February 5, 1946, at 9:30 a.m.) [64]

Proceedings

Trial Examiner Ruckel: The hearing will be in order.

Let the record show that at 9:30 this morning the parties met and have discussed a stipulation covering many of the facts in the case, and that the hearing now will be recessed until 1:30 this afternoon.

(Whereupon, at 11:58 a. m. a recess was taken until 1:30 p. m. of the same day.) [68]

After Recess.

(Whereupon the hearing was resumed, pursuant to the recess, at 1:30 p.m.)

Trial Examiner Ruckel: The hearing will be in order.

Mr. Marshall, will you resume the stand?

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Mr. Hecht: Mr. Examiner, in view of the fact that certain matters concerning the meeting as to which Mr. Marshall has testified have been stipulated to, I will at this point drop that line of cross-examination and go on to another matter.

Trial Examiner Ruckel: All right, sir.

Mr. Hecht: May I have Board's Exhibit 7?

Mr. Royster: I suppose the record should show that the stipulation is tentative, it doesn't appear in the record, and Board's Exhibit 7 doesn't exist as far as the record at present stands.

Trial Examiner Ruckel: That is correct. Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Cross-Examination

(Resumed)

By Mr. Hecht:

Q. Mr. Marshall, I think that yesterday [69] you testified that you were familiar with the agree-

(Testimony of Frank Marshall.)

ment dated July 9, 1941, between the respondent and the ILWU? A. That is correct.

Q. I will show you a copy of what purports to be that agreement. Will you examine it, please?

A. (Examining document.)

Mr. Royster: Well, the Board will stipulate now that the document which has been handed to the witness for examination is a copy of a bargaining agreement entered into July 9, 1941, between the Company and the ILWU.

Mr. Rowell: I will stipulate to that effect also.

Mr. Edises: So stipulated.

Q. (By Mr. Hecht): Mr. Marshall, I think you testified on August 17, 1945, you reported back to an officer of the respondent, asking to be put back to work? A. That is correct.

Q. I will ask you to read to yourself Sections 2 and 3 of the Board's Exhibit 7.

Mr. Royster: It doesn't have an exhibit number, Mr. Hecht, and it has not been offered in evidence.

Mr. Hecht: May I at this time, then, Mr. Examiner, offer in evidence a copy of the contract dated July 9, 1941, existing between the respondent and the ILWU?

Mr. Rowell: Why don't we have it offered as Board's Exhibit 7 out of order? [70]

Trial Examiner Ruckel: Let it be marked Board's Exhibit 7 and received in evidence.

Mr. Royster: Very well.

(Thereupon the document above referred to

(Testimony of Frank Marshall.)

was marked Board's Exhibit 7 and received in evidence.)

Q. (By Mr. Hecht): Will you then read to yourself Sections 2 and 3 of this contract, Mr. Marshall? A. (Examining document.)

Q. On August 17, 1945, when you applied to be reinstated to your position you knew this contract was in existence, did you not?

A. I knew of the contract.

Q. Yes. And you knew the provisions of Section 3 of the contract? A. I do.

Q. And of Section 2 A. Yes.

Mr. Rowell: Well, now, Mr. Examiner, I am going to make an objection to this line of testimony on the basis that the entire case involves the question of whether this employee and other employees similarly dealt with are entitled and were entitled at the time to reinstatement. To ask this witness whether the contract covers that situation or not is to ask this witness to perform the functions of the National Labor Relations Board. [71]

Trial Examiner Ruckel: Well, he has not been asked that yet.

Mr. Rowell: Well, no. I object to the line that he is about to go into then.

Trial Examiner Ruckel: I take it this is preliminary.

Mr. Hecht: Yes.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Hecht): On August 17, 1945, you

(Testimony of Frank Marshall.)

were not a member in good standing of the ILWU?

Mr. Rowell: That also calls for his conclusion. The witness doesn't purport to be able to pass on the suspension.

Mr. Hecht: Let me reframe the question.

Mr. Rowell: All right.

Q. (By Mr. Hecht): You knew then at that time, Mr. Marshall, that you were charged with not being a member in good standing of the ILWU?

Mr. Rowell: I will object to that too, as a matter of fact, as to the member knowing whether he was charged properly and legally charged. The issue of whether proper charges were delivered to this witness is one that may yet have to be determined in court.

Trial Examiner Ruckel: Well, but the witness can testify what happened. Was he told he was discharged, or told he was being tried, or told he was being suspended. Does he have knowledge of some proceeding that was being taken [72] against him? The witness may testify to those things.

Mr. Rowell: All right.

Q. (By Mr. Hecht): Had any charges been made against you by the ILWU at that time?

A. They had.

Q. You knew at that time that the company had been informed that you were not a member in good standing of the ILWU? I am referring at this time to August 17, 1945. A. Yes.

Mr. Hecht: That is all.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I have some questions.

Q. (By Mr. Edises): Mr. Marshall, you testified that on July 20, 1945, you had a conversation with Mr. Railey outside the "L" building, and I believe you testified that you asked that the stewards be present when the contract was signed because you expected trouble.

What trouble were you expecting?

A. Well, I knew labor difficulties were going to arise in the very near future. That is what I was referring to at that time.

Q. Well, can you tell us more exactly what labor difficulties you knew were going to arise?

Mr. Rowell: What is the date of this conversation you are referring to? [73]

Mr. Edises: July 20.

A. I knew that a state of unrest was amongst the employees of the Colgate-Palmolive-Peet Company, and I knew that within the preceding two or three weeks that something would happen.

Q. (By Mr. Edises): You mean the succeeding two or three weeks?

A. After July 20th; after.

Q. You said you knew that within the preceding two or three weeks something——

A. (Interposing): I meant the——

Q. Succeeding, following?

A. I meant the following two or three weeks.

Q. Yes. What had you had to do personally with this so-called labor trouble, labor difficulty?

(Testimony of Frank Marshall.)

A. Well, being a Steward I more or less had contact with a wide majority of the members of the plant, of the employees of Colgate-Palmolive-Peet Company, and hearing what they had to say, and forming my own opinion, I knew that eventually something along the lines of labor difficulties would arise.

Q. Yes. And how long had you had this knowledge?

A. Oh, I would say that it had been going on quite a bit during the entire part of 1945, from January 1 until July 30.

Q. From January 1, 1945.? [74]

A. That is correct.

Q. And tell us a little more exactly just what it was that was going on there in this period?

A. Well, there was just general conversation between myself and other employees as to what they didn't like about the union set-up, and, in general, I would say.

Q. And in these conversations between other employees and yourself did you express yourself as not liking certain things about the union set-up?

A. My personal opinion.

Q. And just what were these things that you didn't like?

Mr. Rowell: Well, now, that is objected to, Mr. Examiner. I may say that there is some indications of a plan to go into the old conduct of the CIO Union, the various reasons why these people here were dissatisfied with it, and to show that the con-

(Testimony of Frank Marshall.)

duct of the union was appropriate. It is utterly immaterial. I don't see why Mr. Edises wants to go into it.

Trial Examiner Ruckel: I can agree to that, we certainly don't want to go into the merits or demerits of either union.

Mr. Rowell: No. If these people had reasons to dislike the Union, whether they were good or bad they were entitled to change their affiliation. I don't care whether their reasons were good or bad myself. I don't see why we [75] have to open up this issue because it is going to be quite extensive.

Trial Examiner Ruckel: I don't think counsel meant to open it up by his question.

Mr. Edises: May I say he testified to the conversation. I have a right on cross-examination to go into the basis of the details of that conversation.

Trial Examiner Ruckel: You didn't ask him what the conversation was. You asked him what the things were he did not like.

Mr. Edises: Yes, I wanted more details. He started to testify about these labor troubles and difficulties which he said he discussed with Railey, I submit on cross-examination I have a right——

Mr. Rowell: Now, he didn't testify to that. He didin't say he had any conversation with Mr. Railey about labor difficulties.

He said he had a conversation with Mr. Railey and said he wished the Stewards to be present. And you asked him the reason why. Now, he has given you the reason why.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Objection sustained to the form of the question.

Mr. Edises: May I have the question read, please?

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.) [76]

Mr. Edises: May I point out, Mr. Examiner, that he testified he wanted the Stewards present at this meeting because he expected trouble? Now, I submit that we should not be precluded from developing further just what this trouble was that he expected, and all these questions go to developing through his testimony just what this trouble was.

Mr. Hecht: Pardon me, Mr. Edises. I have no objection to your question, but could it be stipulated that whatever Mr. Marshall testified to at this point does not tie up the respondent to this labor trouble, will not be held binding on the respondent?

Trial Examiner Ruckel: Well, I don't think that we are interested in general in what the dissatisfactions were. He was asked as to conversations he had had with the employees. He testified he had had conversations with the employees in which they had expressed dissatisfaction, and he thought that would come to a head. Now he is asked what the things were which he did not like.

Mr. Edises: Well, that is part of the trouble, Mr. Examiner, part of this labor trouble. I don't see how we can possibly bring it out unless we do

(Testimony of Frank Marshall.)

ask him just what the trouble was as he regarded it.

I may say further if the Examiner insists on that ruling he will in fact be preventing us from developing our defense because our defense implies in part that the basis [77] of the disciplining of these union Stewards and others was internal disagreements on matters of policy within the organization at a time quite prior to any contemplated change of affiliation.

Trial Examiner Ruckel: Well, it might be well to have the record show that, if you can show it, but without getting into whether or not what side was right in its positions.

Mr. Edises: I am not interested in the question of what was right. I am interested in developing, Mr. Examiner—and I insist that we have got to be able to do that or we are foreclosed from presenting our defense—I am interested in developing the existence of a state of disagreement and conflict within the organization at a time considerably prior to the events that have been so far testified to, and that is one phase of our defense in this case.

Trial Examiner Ruckel: Well, you speak of "defense." You are not on trial.

Mr. Edises: I appreciate that.

Trial Examiner Ruckel: The respondent is on trial.

Mr. Edises: But we are at the same time defending our contractual rights.

Trial Examiner Ruckel: I don't know whether you are defending your contractual right or not. The

(Testimony of Frank Marshall.)

questions, it really seems to me, are how much of this did the respondent have knowledge of to form any part of its motive in discharging [78] its employees.

Mr. Edises: True.

Trial Examiner Ruckel: And if it can be shown that the respondent had no knowledge of this and it formed no part of its motive, then there is no case against the respondent, and we don't care whether or not you or your organization is not justified in some intra-union or some inter-union.

Mr. Edises: I think that is true, but I think as a condition precedent to showing the respondent's knowledge of this we have got to show what it was. I think it will be developed in further testimony that the respondent did have knowledge of some of this internal union disagreement, but I submit that before we can show that we have got to show the existence of this internal union disagreement because that is one of the main bases of our presentation here.

Trial Examiner Ruckel: Well, I can see that we might be opening the door to a long argument in this case, not a trade union argument but an intra-union argument.

Mr. Edises: That, as I say, is the basis of our case, Mr. Examiner. In other words, this is a matter that the Board has not as yet had before it, a situation where we are endeavoring to show that the reason for the Union's action was an internal situation, a matter of differences over internal union

(Testimony of Frank Marshall.)

policy which long antedated this cessationist move that has been testified to. [79]

Now, I submit that the Board ought to have all those facts before it in order to be able to determine whether it is a valid defense.

Mr. Hecht: May I say something, Mr. Examiner, at this point: Assume this: that the Company knew that there were five causes of disagreement between the complainants here and the intervening ILWU. Now, the Company is here on an imputed charge. In effect, what this proceeding amounts to is this: That the complainants are charging that they were expelled or suspended from the ILWU without just cause because they were merely attempting to change their bargaining agent, and that the Company, setting itself up as an extrajudicial tribunal should have ascertained whether or not the cause of their suspension or expulsion was just, and if it found to its own satisfaction that it was not just cause it should not honor the demand for their removal from the Company, otherwise that it would honor it. Now, if the Company knew there could be possibly five reasons for this discipline, the Company is entitled to show that there were five reasons, and it should not attempt the second guess, what the reason was the union had for suspending these men.

Mr. Edises: I may say, your Honor, that there were two trials held by the Union of the defendants in this case, and we intend at an appropriate

(Testimony of Frank Marshall.)

time to introduce in [80] evidence the records of those trials and the findings of the Union.

Mr. Rowell: Well, now, on that again——

Pardon me for interrupting, but I think it is appropriate to point out that that offer of proof by the CIO Union will obviously have to be met by countervening proof on our part that these proceedings held within the Union were improper, illegal, unlawful, and improperly founded throughout.

Now, are we going to try the Union's internal processes in this case?

Mr. Edises: That is just the point. The point is, in my opinion, what we have here is a matter of internal conflict between the unions. That is the basis of our presentation, of our case, and the Board has got to have those facts. It may very well be that Mr. Rowell is right, and that when the Board has had these facts placed before it it may throw the whole case out and say it is not going to intervene in the internal affairs of a union, but certainly the Board has got to have the facts before it is in a position to make any such determination.

Trial Examiner Ruckel: Why? I mean the Board's case stands or falls upon the part that the respondent played. If the respondent knew nothing about the internal affairs of the Union then there would be a strong inference that [81] the men weren't discharged because of any intra-union fight.

Mr. Hecht: Assume this, Mr. Examiner: May I ask this: I would like to know your position in

(Testimony of Frank Marshall.)

the matter. Assume that the Company knew there might be five or six reasons why these men should be disciplined, or could be disciplined by the ILWU, and that among those reasons was either dual unionism, or attempting to get a new bargaining agent, now, is the Company going to be asked or be placed in the position of committing an unfair labor practice because it did not set itself up as an extra-judicial tribunal to find out which of these five or six causes caused the disciplining or expulsion of these complainants?

Trial Examiner Ruckel: Well, I won't purport to answer that question. You know the cases so far, probably. If I correctly understand the cases so far, without holding to the contrary, they have to date in substance held this: that the discharge is discriminatory where the respondent discharged the man involved with the then present knowledge that the reason given by the Union, that is, that he was not paid up in his dues was false, but that it had at that time knowledge that something else was true, in other words, that he had opposed that Union at a previous election or had in some other way been guilty of what the Union calls dual unionism, but the cases so far have not required the [82] respondent to act upon anything which was not before it.

If I may cite the recent Phelps-Dodge decision of the Board, which happens to have been my own case, where the man was discharged, presumably—well, the man's discharge was requested by the Union which had the contract on the ground that

(Testimony of Frank Marshall.)

he had not paid his dues. The evidence showed, however, that the man, though previously being a member of the Union, had stopped paying his dues before the escape clause provided for in the contract had run he had stopped paying his dues before that time. Now, he had a receipt for his dues. The last receipt showed that his dues had not been paid up within months of the time of the contract. But he exhibited that receipt to the Company and the Union representatives sitting together in the office. It is perfectly obvious on its face that he had withdrawn from the Union long before he would have been obligated to keep up his membership. The Company discharged him at the simple request of the contracting union. Well, the Board held that was discriminatory. It said that the evidence before the Company was such that the Company had to go no further than it to ascertain that the man was not—the man had never been obligated to pay his dues since the contract was signed. In other words, the Board has not held so far that the Company is obligated to take affirmative steps to carry on or conduct an investigation of the Union's books, for example, which would have [83] been material in this case to find out whether or not the dues had been paid up, or any other internal affairs of the Union, but to act only upon the information that it has at the time.

Now, I think that is the crux of the case. I don't say the Board will never go any further than that, but I say today it has not.

(Testimony of Frank Marshall.)

And if we are going to ask this witness or other witnesses what the situation was in the Union, then what is the relevancy unless you go further and show that the Company had knowledge, or should have had knowledge of that situation in the Union?

Mr. Edises: Well, I agree with that, and I agree with the legal question of the Company's knowledge. But suppose the facts should develop, Mr. Examiner, that in the past year or two the defendant had been brought before the Union on charges of violating the Union's racial discrimination, no discrimination policy——

Mr. Rowell: By the "defendant" do you mean the witness?

Mr. Edises: I am sorry. I mean the witness.

And that he had been reprimanded by the Union for violating that racial discrimination policy, and, suppose for example, that it also showed that he had not been carrying out his duties as Steward, and that he had been sabotaging out his duties as Steward, and that he had been sabotaging the political action program of the Union, and [84] that he had been refusing to call a meeting of the employees to discuss current contract negot[illegible]as and similar matters, and that the Company had been aware of these matters, of disagreement between the witness and the Union——

Mr. Rowell (Interposing): Well, now——

Mr. Edises: I haven't finished.

——and then there came along a request by the Union that this man be suspended, with that back-

(Testimony of Frank Marshall.)

ground in the Company's knowledge, well, now, wouldn't that go to the question of whether the Company believed in good faith that the Union's action was taken because of these matters of violation of Union policy rather than because of affiliation with some outside organization?

Trial Examiner Ruckel: I can see some force in that.

Why can't we do this: Can't we stipulate as to the bare facts, that if it is true——

Mr. Rowell: You don't suggest that we even for a moment would consider stipulating to——

Trial Examiner Ruckel: Well, if it is a fact that this witness, for example, were brought up to some kind of a trial in the Union, let that bare fact be stipulated to, that is, if he was brought up to trial for having made some anti-racial statement, for example. Now, if that is a fact can it be stipulated to, not as to whether he was guilty or not, and not as to what the statement was, but the bare [85] fact that he was tried?

Now, that certainly ought to be sufficient.

Mr. Edises: Well, it may be that that would be sufficient. You know, it strikes me we are taking up an awful lot of record.

Trial Examiner Ruckel: You couldn't certainly expect the Respondent to be the judge of whether the Union had acted rightfully or not, or whether this man was guilty in some internal Union trial?

Mr. Edises: Obviously not.

Trial Examiner Ruckel: The most that could be

(Testimony of Frank Marshall.)

asked of the Respondent, the most that could be assumed, it seems to me, would be the Respondent knew of it.

Mr. Edises: I realize that.

May we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back to the record.

Q. (By Mr. Edises): Mr. Marshall, when was the first time a movement out of the ILWU was contemplated by the Stewards, by the Stewards or others of these nine? You know the nine that I am referring to?

A. You mean other than the nine people, other than the first nine who were taken out of the plant, or by all of the members of the plant? [86]

Q. Well, any who you may have been aware of or identified with?

A. Oh, I might say the early part of July, 1945.

Q. What form did that move take?

A. Just discussion, as I pointed out, a meeting with the officials of the United Mineworkers Union.

Q. Was that in July, 1945?

A. It was some time in July.

Q. Do you remember about when?

A. No, I don't remember just about when.

Q. Could you say whether it was towards the end of July or towards the middle or at the beginning?

A. Approximately the middle.

(Testimony of Frank Marshall.)

Q. And who did you speak to, what official of the Mineworkers?

A. I don't recall their names now.

Q. And prior to that time there had been no discussion of cessation, do I understand you correctly?

The Witness: Will you repeat that question?

Mr. Rowell: The question is whether the witness understands you correctly. I think——

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.)

A. You mean that there had been no discussion of withdrawing from the Union? Of other Union affiliations? [87]

Q. (By Mr. Edises): Yes.

A. Not to my knowledge.

Q. Now, what particular matter, what particular grievance or matter was responsible for this withdrawal movement at that particular time?

Mr. Royster: I will object.

Mr. Rowell: Mr. Examiner, that is the same thing as we have been talking about before, I think. Regardless of the validity of the objections that these people had to the Union, whether the Union was right, or they were right, the only question is whether they decided to secede from the Union.

Trial Examiner Ruckel: It seems to me that is about the same thing we threshed out, isn't it, Mr. Edises?

(Testimony of Frank Marshall.)

Mr. Edises: Well, I am trying to limit it to recent history, but I feel that in view of the fact that the testimony is that in the middle of July, 1945, they made an actual withdrawal move, I should be entitled to ask them what the immediate occasion of that move was.

Trial Examiner Ruckel: But do you expect to show the Company was aware of that?

Mr. Edises: Yes, I think—in fact, all of this is predicated, as I understand the theory of the Board's case, on some showing of company knowledge. Unless there is that tie-up—— [88]

Trial Examiner Ruckel: There has been no showing of knowledge yet.

Mr. Edises: No.

Trial Examiner Ruckel: That is up to the Board.

Mr. Edises: Yes, but I assume as part of our case a mere recitation of these things would be of little significance from the standpoint of the Company's liability unless it could be shown that the Company had some knowledge.

Trial Examiner Ruckel: Well, but it is not up to you to produce that.

Mr. Edises: That is true.

Trial Examiner Ruckel: If that knowledge is not forthcoming then it becomes irrelevant whether he contacted the United Mineworkers or not.

I am going to sustain the objection at this time.

Q. (By Mr. Edises): Where did this meeting with a representative of the Mineworkers take place?

(Testimony of Frank Marshall.)

A. At the home of one of the first nine suspended men.

Q. Whose home? A. William Sherman.

Mr. Hecht: May I have that name again, please?

The Witness: William Sherman.

Mr. Hecht: Thank you.

Q. (By Mr. Edises): And who was present at that meeting?

A. Well, I recall a couple of the Stewards. [89] Are you asking that I name each individual there?

Q. Yes, everyone that was present.

Mr. Rowell: With the exception of people now presently employed by the Employer?

Mr. Edises: If there were any such.

Mr. Rowell: I will add that, if there were any such.

A. Dave Luchsinger, myself, Sanford Moreau, William Sherman, and some officials of the United Mineworkers Union which I do not know their names.

Q. (By Mr. Edises): And just what was done at this meeting, what took place?

A. It was just a general discussion of what would have to be done to seek affiliations with another organization.

Q. And did you arrive at any decision?

A. I don't remember.

Q. Well, at any rate you did not affiliate with the Mineworkers? A. No.

Q. Now, coming to the next meeting, the July

(Testimony of Frank Marshall.)

26 meeting, who called that meeting? That was at Pete's Rendezvous.

A. That was William Sherman.

Q. And how was notice of this meeting given?

A. Just by word.

Q. Well, who did you give it to? Did you give it to everybody or did you have some more or less limited group [90] in mind?

A. Just a limited group.

Q. And what was that group?

A. A group of employees at Colgate-Palmolive-Peet.

Q. Well, the group that you had had previous discussions about withdrawing from ILWU?

A. They were included.

Q. Now, did you discuss the means of withdrawing from the ILWU? I am speaking of the July 26 meeting? A. I don't remember.

Q. You did decide to do something, didn't you, at that meeting? A. Yes.

Q. What did you decide to do?

A. I was not present at the entire meeting that particular night. I believe I came in a little later. But at that time, why, we decided to hold a later meeting for all the employees interested.

Q. Yes. Now, then, you held this later meeting on July 30, is that right?

A. That is correct.

Q. And notices were posted around July 28?

A. That is correct.

Q. In the plant? A. That is correct. [91]

(Testimony of Frank Marshall.)

Q. And will you describe what took place at this meeting? —A. The meeting of July 30?

Q. The July 30 meeting.

A. Well, at that time the Stewards had already been locked out of Colgate-Palmolive-Peet.

Q. When had they been let out with reference to the meeting? A. At 2:00 P.M., July 30.

Q. At 2:00 P.M. And the meeting was at what time? A. 4:15.

Q. Yes.

A. And at that time the motion was passed by the employees who attended that meeting to break off relations with ILWU and temporarily join the Employees Welfare Association.

Q. What was decided to be done about getting these people back, the five Stewards?

A. Four men were elected——

Trial Examiner Ruckel: He has told us all about this.

Mr. Edises: Yes, this is preliminary to something else.

The Witness: Four men were elected to contact the Company the following day and seek to reinstate the five Stewards who had been let out.

Q. (By Mr. Edises): Now, was there any discussion about how you were going to back up that demand? A. I don't remember. [92]

Q. When was there the first discussion of strike action? A. None that I know of.

Q. When did you first discuss with any of these

(Testimony of Frank Marshall.)

people you were associated with the question of refusing to work until these people were reinstated?

Mr. Tobriner: Objected to, Mr. Edises, on the ground no foundation has been laid for that. You are assuming something not in evidence.

Mr. Edises: This is cross-examination.

Mr. Hecht: I think there is a stipulation to that effect.

Mr. Tobriner: No.

Trial Examiner Ruckel: The stipulation has not been stipulated to yet.

Mr. Edises: However, it is cross-examination. I ought to have some leeway, I think.

Trial Examiner Ruckel: We can't assume on cross-examination that something has happened on which no testimony so far has been given.

Mr. Edises: I will go into it later then.

Q. (By Mr. Edises): Mr. Marshall, it is a fact that the Employees associated with you determined that they were going to refuse to return to work until the Stewards were reinstated.

Now, will you place the time that that decision was [93] made?

Mr. Tobriner: Why don't you ask him first the first question, Mr. Edises?

Mr. Edises: I think he testified to that, didn't he? I think he testified to that.

Mr. Tobriner: All right, I will withdraw that.

Q. (By Mr. Edises): There was such a determination, was there not?

(Testimony of Frank Marshall.)

A. Yes; that was at the following meeting, that was the following day; July 31, I believe it was.

Q. July 31? A. Yes.

Q. Now, let me see—as I understand it, the Stewards were laid off on the 30th; right?

A. That is correct.

Q. Now, then, my question is, when was the first discussion of economic action to bring about the return of the Stewards?

Trial Examiner Ruckel: Was there any at the meeting on the 30th?

The Witness: No, I don't believe there was, not on the 30th, no.

Mr. Edises: He testified he didn't remember that.

The Witness: No, on the 30th, as I stated, it was just the election of a four-man group to seek to re-establish [94] the men. The following day was the action taken by the membership not to return to work until the Stewards returned.

Q. (By Mr. Edises): Yes. And that was at the meeting, but was there some discussion among the leaders of the group before the meeting?

A. Not that I can recall, no.

Q. You are familiar with this document which I think is—well, we can mark it for identification as Board's Exhibit 8.

(Whereupon the document above referred to was marked Board's Exhibit 8 for identification.)

(Testimony of Frank Marshall.)

Q. (By Mr. Edises): Are you familiar with this document?

A. I recall seeing this, yes.

Q. Do you remember when you first saw that?

A. I can't recall whether it was directly after the meeting with Mr. Railey on the morning of July 31 or just before, but I believe a copy of this was handed to me by either Mr.—one of the Union officials. I don't recall which one it was; some Union official.

Q. In any event, it was before the strike, was it not?

Mr. Rowell: Now, that is objected to, the use of the word "strike." There has been no testimony as to a strike.

Mr. Edises: May I ask, through the Examiner, that Mr. Rowell suggest what word he would like me to use and I will use it. Personally, I think I know what a strike is, and I [95] think the witness knows what a strike is, but if he wants some other word I will use it.

Trial Examiner Ruckel: If there is any purpose to be served by not using it, then let's use some other word, cessation of employment, or withdrawal of labor power, or not working.

Mr. Edises: May I have the last question?

Mr. Rowell: The question was objected to.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): It was before the withdrawal of employment, was it not?

(Testimony of Frank Marshall.)

A. For the rest of the employees or for myself now are you asking that question?

Q. For yourself.

A. Well, I never went out myself; I was taken out, so it had no bearing on me whatsoever.

Q. No, I think you misunderstand me. I mean you saw this document, Board's Exhibit 8 for identification?

A. I was already out of work when that was handed to me.

Q. And what time was that?

A. I said the forenoon of July 31, 1945.

Q. Before the remainder of the employees ceased working, is that right?

A. That is correct.

Q. Now, do you know, Mr. Marshall, or can you enlighten [96] us as to what should be referred to in this document when it states, "Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work?"

Could you indicate for us what the basis for that statement might have been?

Mr. Rowell: That is objected to.

Mr. Royster: I will object.

Mr. Rowell: That is objected to on the grounds obviously the document is one issued by Mr. Edises' client, the CIO Union. They know——

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Now, let's go on to this meeting with Mr. Railey. That was on July 30 at 2:00 P.M., was it not? A. That is correct.

(Testimony of Frank Marshall.)

Q. Did you say you were present at that meeting? A. I was.

Q. You testified that Mr. Duarte handed copies of charges to certain employees; is that correct?

A. That is correct.

Q. Who were those employees?

A. The five Stewards.

Q. Including yourself?

A. Including myself.

Q. Were any charges handed to anybody else?

A. Not that time that I know of.

Mr. Rowell: Mr. Examiner, just as a matter of protection against some other legal problem that might come up, I want to ask that the questions and the answers with regard to copies of charges be either stricken, or that Mr. Edises state that he is not asking that we be bound by testimony as to whether they were actually copies of charges as required by law and by the Constitution and By-laws of the Union.

Mr. Edises: Well, Mr. Examiner, may I point out that this witness testified to being handed this copy of charges on direct examination by the Board. I didn't bring this up.

Trial Examiner Ruckel: That is my recollection. He testified to it already.

Mr. Rowell: Well, we will take it on redirect.

Q. (By Mr. Edises): Now, I want to ask you about this Employees Welfare Association. Did

(Testimony of Frank Marshall.)

you participate in any discussion about the name of that organization?

A. Yes, I believe I did.

Q. And what was said as to the reason for naming it Employees Welfare Association?

Mr. Royster: I don't see the materiality of this, Mr. Examiner.

Trial Examiner Ruckel: What is the materiality of this?

Mr. Edises: Well, I am interested in the question of [98] whether this is a labor organization, your Honor.

Trial Examiner Ruckel: Well, what has the name got to do with it?

Mr. Edises: Well, this: I am familiar with a number of Employees Welfare Associations which have nothing to do with the functions of labor organizations.

Trial Examiner Ruckel: Well, the similarity in name certainly cannot imply similarity in function.

Mr. Edises: Well, perhaps that may be true, but I think the question of the name of the organization, the name, after all, has some significance, showing the purpose of an organization.

Trial Examiner Ruckel: Well, an Association frequently has almost come to be synonymous with a company-dominated union, but that is not your contention here, is it?

Mr. Edises: Well, I think we should be permitted to determine why they chose the name "Employees Welfare Association" rather than some

(Testimony of Frank Marshall.)

other name. It may definitely have a bearing on the functions of the organization.

Mr. Royster: Well, he is getting at the functions through the back door there, Mr. Examiner.

Mr. Edises: Well, this is cross-examination.

Mr. Royster: Certainly it is.

Mr. Edises: And in cross-examination sometimes it is advisable to go through the back door. [99]

Trial Examiner Ruckel: I don't see the relevancy. Objection sustained.

Mr. Edises: Exception.

I think that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: Nothing further.

Mr. Rowell: One question.

Redirect Examination

By Mr. Rowell:

Q. Do you know, as a matter of fact, whether that purported copy of a charge which was delivered to you by Mr. Duarte was actually the full and correct copy of charges filed with the Union?

Mr. Edises: I object. How on earth can he know that?

Mr. Rowell: Obviously he doesn't. I just want him to tell us he doesn't.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I submit if he has a copy of the charge I would be glad——

Trial Examiner Ruckel: All the question means, I think, is a purported copy of the charges.

(Testimony of Frank Marshall.)

Mr. Rowell: That is right. But I don't want to take any chances of having him be faced with this testimony in some other proceeding.

Mr. Edises: Let's ask him.

Do you have a copy of the charge? I mean, do you have [100] the copy that was handed to you?

The Witness: By Mr. Duarte, yes.

Mr. Edises: Well, could you produce it?

Mr. Rowell: No, I object to the production. It is not material at all to the proceeding.

Mr. Edises: I didn't raise the question. It is up to you.

Trial Examiner Ruckel: If they were offered and received it would be material, his testimony that that is what he was handed. He is not called upon to interpret its contents.

If you have that with you, I would like to see it, please.

The Witness: I will look for it. (Handing document)

Trial Examiner Ruckel: Let it be marked.

Mr. Edises: Yes. Will you mark this for identification as ILWU Exhibit 1.

(Thereupon, the document above referred to was marked Intervener's Exhibit 1 for identification.)

Q. (By Mr. Edises): Will you identify this, Mr. Marshall? I am showing you ILWU 1 for identification?

Is that the charge that was handed to you in the meeting you have just testified to?

(Testimony of Frank Marshall.)

A. (Examining document): Yes, that is a copy by Mr. Duarte.

Mr. Edises: I offer that. [101]

Mr. Rowell: No objection.

Mr. Royster: No objection.

Mr. Hecht: May I see that?

(The document was handed to Mr. Hecht.)

Trial Examiner Ruckel: It may be received.

(Thereupon, the document heretofore marked Intervener's Exhibit 1 for identification was received in evidence.)

Q. (By Mr. Edises): Oh, by the way, Mr. Marshall, were minutes taken of the meeting of July 26th? A. I don't remember.

Q. Were minutes taken of the meeting of July 30? A. Yes.

Q. Do you know who has those minutes?

A. No.

Q. Do you think you could locate them?

Mr. Rowell: Well, if you want them, I think I will ask among the people here and see if they are available.

Mr. Edises: Yes, I would like to see them.

(Mr. Rowell handed the document.)

Mr. Edises: Will it be stipulated that these are the minutes of the July 30 meeting referred to in the testimony?

Mr. Hecht: Mr. Edises, I suppose you mean that it reflects what Brother Thompson recorded, but

(Testimony of Frank Marshall.)

does not necessarily reflect what actually happened in the meeting, is that it? [102]

Mr. Edises: Well, they are the official minutes, I suppose. If they are the official minutes of the meeting they are relevant as evidence of what went on at the meeting. That is my understanding.

Mr. Hecht: Well, I don't wish to be bound by anything that is stated——

Mr. Edises: Well, I assume the Company is not bound by anything that we offer. Isn't that correct, Mr. Examiner?

Mr. Royster: You asked for a stipulation on those minutes.

Trial Examiner Ruckel: Well, I am assuming nobody is bound by the statements made at the meeting and which may be found in the minutes.

Is that what worries you?

Mr. Edises: I am not worried.

Trial Examiner Ruckel: It seems to me that no party other than the party that makes the minutes is bound by them.

Mr. Edises: Well, my question was whether these are the official or, at least, a true copy of the official minutes of the meeting of the Employees Welfare Association on July 30.

Trial Examiner Ruckel: Well, can that be answered? It might be all of that and still be incorrect as reflecting what happened. [103]

Mr. Edises: I appreciate that.

Mr. Royster: I would rather not stipulate to these, Mr. Edises, for the reason that while I have

(Testimony of Frank Marshall.)

every reason to believe they are correct Mr. Thompson, the recording secretary, will be here tomorrow and can identify them.

Mr. Edises: Yes. Maybe Mr. Marshall can.

Q. (By Mr. Edises): Can you identify these, Mr. Marshall? A. No.

Mr. Edises: Could we have these marked for identification?

Mr. Royster: That is CIO No. 2.

Trial Examiner Ruckel: No. 2.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 2 for identification.)

Q. (By Mr. Edises): Now, do you know if there were any minutes of the July 31 meeting?

Mr. Royster: I have them.

Mr. Edises: You have them?

Mr. Royster: Yes (handing document).

Mr. Edises: Will you mark this for identification, please, as ILWU Exhibit 3?

Trial Examiner Ruckel: Mark it as Intervenor's Exhibit 3 for identification.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 3 for identification.) [104]

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Q. (By Mr. Hecht): Mr. Marshall, you say you

(Testimony of Frank Marshall.)

attended the meeting of September 3; that is correct, isn't it? I mean of July 30?

A. That is correct.

Q. Did you at the meeting of July 30 hear the reading of the minutes made of the meeting of July 26? A. I don't remember.

Q. Will you say that those minutes were not read?

A. I believe I stated a few minutes ago to the best of my knowledge I don't believe there was any minutes taken of the meeting of July 26.

Mr. Hecht: All right, that is all.

Trial Examiner Ruckel: That is all.

Mr. Royster: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Are the parties in agreement on the stipulation which the reporter has had dictated and which she has read to us off the record?

Mr. Hecht: So stipulated for the respondent.

Mr. Edises: So stipulated for the ILWU.

Mr. Rowell: And the charging union stipulates.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: Will you spread that on the record, then, as you have read it back to us?

(The stipulation appears in the following figures and words to-wit:)

"It is hereby stipulated by and among counsel for the Board, counsel for the respondent, counsel for the International Chemical Workers Union, and counsel for the ILWU, that on July 26, 1945, Clyde W. Haynes, David Luschsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, with other employees of the respondent, met at a restaurant in Oakland, California, discussed severance of their relationship and the relationship of other employees of Colgate-Palmolive-Peet from the ILWU, and discussed further the formation of Colgate-Palmolive-Peet's Employees Welfare Association. Approximately 28 to 30 employees in all, including the nine above named, attended this meeting.

"It is stipulated that at the time the meeting was held the respondent had no knowledge that it was being held. The participants in this meeting voted or resolved that a further meeting be held on July 30, 1945, to which all employees of Colgate-Palmolive-Peet within the bargaining unit at that time represented by the ILWU would be invited, at which meeting opportunity would be given the [106] employees to act upon a motion to withdraw from the ILWU and to form Colgate-Palmolive-Peet Employees Welfare Association.

"Following this meeting, on July 28, 1945, a Saturday, the following notice was posted on respondent's bulletin boards and came to the attention of Charles Wood, Purchasing Agent of the Company:

"Notice of Meeting: Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945."

"Information as to the posting of this notice and its contents came to Mr. Wood late in the afternoon of July 28, 1945, by means of a telephone call received by him from Mr. Altman, Plant Superintendent.

"On July 30, 1945, a Monday, the Company received a letter from the ILWU bearing date of July 30, 1945.

"This letter is hereby entered in evidence by stipulation as Board's Exhibit 3.

"The individuals named in the letter, who at that time constituted the ILWU Stewards at the respondent's ~~plant~~, were called to the office of Superintendent Altman where Vice President Railey advised him of the receipt of the letter and advised them further that they could no longer [107] work for the Company until their difficulty with ILWU had been adjusted.

"Immediately following this notification to the five Stewards named in Board's Exhibit 3, ILWU representatives distributed throughout respondent's plant a bulletin which is hereby offered in evidence as Board's Exhibit 4.

"At 4:15 on the afternoon of July 30 a substantial majority of respondent's employees met at the Finnish Hall in Berekeley, California. Official min-

utes of the meeting are in evidence as Intervenor's Exhibit 2.

"After the close of the meeting telegrams were sent to the ILWU and to the Company, and I hereby offer them in evidence as Board's Exhibits next in order. Telegram to ILWU will be Board's Exhibit No. 5, and the telegram to the company will be Board's Exhibit No. 6.

"On July 31, 1945, Thompson, Lonnberg, Olsen, and Sherman went to the office of Vice President Railey and requested the reinstatement of the five Stewards named in Board's Exhibit 3. This request was refused.

"Mr. Railey replied that the five Stewards had been suspended by the ILWU, and that in accordance with the terms of the contract then existing between the ILWU and the Company, which is hereby offered in evidence as Board's Exhibit 7, the Company had no choice but to suspend the Stewards from their employment. [108]

"On the morning of July 31 ILWU representatives caused to be circulated among respondent's employees at the plant a bulletin, which is hereby offered in evidence as Board's Exhibit 8.

"At approximately noon on July 31, 1945, a substantial majority of respondent's employees left the plant and attended a meeting. Official minutes of this meeting are in evidence as Intervenor's Exhibit 3.

"At the invitation of the employees Vice President Railey addressed them and urged them to re-

turn to work. Other proceedings took place about which there is dispute.

"The employees at the meeting reaffirmed their vote not to return to work until the Stewards were reinstated. The meeting was recessed and resumed on the evening of August 2.

"At the meeting of August 2, which was attended by a substantial majority of respondent's employees, a motion was approved to dissolve Colgate-Palmolive-Peet's Employees Welfare Association, and to affiliate with International Chemical Workers Union, A.F. of L. A motion to return to work on August 3 was made and carried.

"On August 3, 1945, the employees of the respondent, with the exception of the five Stewards and the four committeemen, Thompson, Lonnberg, Olsen and Sherman, returned to work. [109]

"The actions of the employees of the respondent as described on July 31, August 1, and August 2, 1945, were without the sanction of the ILWU."

Mr. Rowell: May we have a stipulation that all those exhibits were offered in evidence, and I ask for a ruling by the Examiner as to their admissibility?

Trial Examiner Ruckel: Yes. Board's Exhibits 3, 4, 5, 6, 7 and 8, and Intervener's Exhibit 2 are received in evidence.

Mr. Rowell: I think also Intervener's Exhibit 3, Mr. Examiner.

Mr. Edises: Intervener's Exhibits 2 and 3, we will offer those.

Trial Examiner Ruckel: Intervener's 2 and 3 are received in evidence.

(Thereupon, the documents above referred to were marked Board's Exhibits 3, 4, 5, 6, and 8 and were received in evidence.)

(Thereupon, the documents heretofore marked Intervener's Exhibits 2 and 3 for identification were received in evidence.)

Mr. Royster: Now, Mr. Examiner, while it may be possible for us to arrive at further stipulations later on this afternoon, I have a witness who is here from Manteca, about 70 miles distant, who would find it very difficult to [110] return here tomorrow, and I would like very much to call him at this time.

Mr. Edises: We have no objections.

Mr. Hecht: No objection.

Mr. Royster: Mr. Lincoln Olsen.

LINCOLN FRANK OLSEN,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Lincoln Frank Olsen, O-l-s-e-n.

Q. Where do you live, Mr. Olsen?

A. Right now I am living in Lathrop, California.

(Testimony of Lincoln Frank Olsen.)

Q. What is your occupation?

A. Machinist.

Q. You were employed by the respondent here, were you not? A. I was.

Q. And for what period?

A. From October 18, 1932, until July 31, 1945.

Q. And during that period were you a member of the ILWU?

A. I was a member of the ILWU from July 1, 1941, until July 31, 1945.

Q. Now, Mr. Olsen, it has been stipulated that there was a meeting of respondent's employees, you among them, at a [111] restaurant in Oakland on July 26, 1945. It has also been stipulated that there was discussion at that time concerning the formation of Colgate-Palmolive-Peet's Employees Association.

Did you participate in that discussion?

A. I didn't quite get that.

Trial Examiner Ruckel: Did you take part in that discussion?

Q. (By Mr. Royster): Do you remember the meeting of July 26 held at a restaurant?

A. Yes, I do, yes.

Q. And you attended that meeting, did you?

A. Yes, I did.

Q. Was there a discussion there of the formation of an Employees Welfare Association?

A. Yes, there was.

Q. Did you participate in that discussion, did you take part in it?

(Testimony of Lincoln Frank Olsen.)

A. Well, I was at the meeting, if that is what you mean.

Q. You heard the discussion?

A. I heard the discussion.

Q. Was there discussion as to the purpose of the Employees Welfare Association?

A. Well, to my knowledge, the purpose of the Employees Welfare Association was a temporary set-up to seek affiliations [112] with a strong international.

Q. Did you work on July 30?

A. Yes, I did.

Q. 1945? A. Yes, I did.

Q. Did you see any representatives of the CIO on that day?

A. Yes, I seen—in our building I seen two officials and a new appointed Steward.

Q. Now, when you say "our building," what building do you refer to?

A. Well, I worked in the Seafoam Department, and offhand now what building that would be called I don't know.

Mr. Wood: "J".

The Witness: "J" Building, that is right.

Q. (By Mr. Royster): Now, Mr. Olsen, I show you Board's Exhibit 4.

Have you seen that before?

A. Yes, this was handed out on July 30.

Q. By whom?

A. By those two officials that I was referring to and that new appointed job Steward.

(Testimony of Lincoln Frank Olsen.)

Q. Did you name the officials?

A. Could I name them?

Q. Did you name them? If you didn't name them, will you [113] give me the names of the officials?

A. Well, one was Business Agent Gonick, and the other, I don't know what his representation was, but I believe his name was Gleichman.

Q. Did you receive one of these notices, Board's Exhibit 4?

A. Personally from them I didn't, but I did get one.

Q. Is there a bulletin board in the "J" building where you worked?

A. There is a bulletin board in each department.

Q. Did you see Board's Exhibit 4 on any bulletin board?

A. I can't very well recall whether I did or not.

Q. Now, you attended the meeting of the Employees Welfare Association on July 30, 1945, did you not? A. Yes, sir.

Q. Were you selected to perform any task at that meeting?

A. I was one of the appointees to represent the employees to present ourselves the next morning at Mr. Railey's office and try to reinstate the five Stewards that was suspended on July 30.

Q. Now, it has been stipulated that you and three others, who were named in the stipulation, did go to the respondent's plant on July 31, and have a conversation with Vice President Railey.

(Testimony of Lincoln Frank Olsen.)

Did you have a conversation with any ILWU representatives in Mr. Railey's presence on that date? [114] A. Did I personally?

Q. Yes. A. No, sir.

Q. Did you overhear any conversation on that day when Mr. Railey was present and representatives of the ILWU were present?

A. Well, I heard in that office that notices was made out to three of the parties that was appointed to that committee, and they did not know my name as yet, and that I would be served with one.

Q. Well, now, let's see if we can identify the persons who made that statement, if it is a statment. A. That was made by Mr. Heide.

Q. Mr. Paul Heide? A. Paul Heide, yes.

Q. And I believe it has already been testified that Mr. Paul Heide is a VicePresident, is that correct, of the ILWU?

A. Second Vice President.

Q. Second Vice President.

Now, just what did Mr. Heide say?

A. Well, offhand——

Q. (Interposing): Just your best recollection.

A. Well, all I could say is that he said that notices were already made out for three of the fellows, that he knew them and knew their past, but I was new to him and they [115] didn't have my name.

Q. Well, did anyone ask you your name?

(Testimony of Lincoln Frank Olsen.)

A. Well, I believe it was the President, Lynden.

Q. Mr. Lynden asked you your name?

A. Yes.

Q. And what did he do, if anything, after you gave him your name?

A. What he did after that I don't know, but I know I got a notice in the mail.

Mr. Royster: Mr. Edises, I have here a copy of a letter purportedly addressed to Mr. Olsen. I wonder if we can agree that the original of that letter was sent by the ILWU to Mr. Olsen?

Mr. Edises: Certainly.

Mr. Hecht (examining document): No objection.

Q. (By Mr. Royster): Mr. Olsen, I show you a writing which purports to be a copy of a letter addressed to you. Did you receive the original of that letter? A. Yes, I did.

Q. Can you tell me approximately when you received it?

Mr. Rowell: That is with reference to the meeting in Railey's office, isn't it?

Mr. Royster: Yes.

A. I think it was in the week of August—between the fifth and tenth. [116]

Q. (By Mr. Royster): It was subsequent, then, to the time of the meeting in Mr. Railey's office about which you testified? A. That is right.

Mr. Royster: I offer this in evidence, Mr. Ex-

(Testimony of Lincoln Frank Olsen.)

aminer, and ask that it be marked Board's Exhibit 9.

Mr. Rowell: No objection.

Mr. Edises: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document above referred to was marked Board's Exhibit No. 9 and received in evidence.)

Q. (By Mr. Royster): Now, Mr. Olsen, after this conversation about which you testified you overheard the remarks of Mr. Heide and of Mr. Lynden, was there anything said to you or to the three men who accompanied you in your presence by Mr. Railey?

A. The only thing that I can recall is that he said that he couldn't put the five men back to work.

Q. Now, did you attend a meeting of the respondent's employees on the afternoon of July 31?

A. Yes, I did.

Q. Did Mr. Railey attend that meeting?

A. Yes, he did.

Q. He was invited to attend, was he not? [117]

A. He was invited to attend.

Q. Did he address the meeting?

A. He talked there for quite some time, but what he talked about, I was at the door and I didn't have much of a chance to hear his conversation.

Q. You didn't hear the conversation?

A. I heard some of it but——

Q. What did you hear?

(Testimony of Lincoln Frank Olsen.)

A. Well, I heard the part where he wanted us all back to work as soon as possible, wanted everything threshed out.

Q. Was there any vote taken down during the time that Mr. Railey was at the meeting?

A. There was a standing vote taken in his presence that the people were behind the five shop Stewards.

Q. Well, what was the motion?

A. The motion—well, my idea was that the motion was that the employees didn't—I mean, if the five Stewards weren't reinstated that the employees would continue their meeting until such time that they were reinstated.

Q. Now, it has been stipulated that all of the employees except you and eight others named returned to work on August 3.

Did you make any attempt to go back to work on August 3?

A. Well, we didn't make an attempt to go back to work, but [118] we called up. When I say "we", Mr. Sherman and myself called up Mr. Altman after the meeting.

Q. After what meeting?

A. The meeting on August 2, and told him that the plant—the employees were going to go back to work in the morning, and if we were to go back? And he said he was sorry, that we had been suspended and——

Q. (Interposing): Meaning you and Sherman?

(Testimony of Lincoln Frank Olsen.)

A. Yes; talking to me personally now he was.

Q. Yes.

A. And he said that "it would be better for you and I if we don't face one another and I tell you over the phone," so I accepted that as not being able to report to work the next morning.

Q. Well, since August 2, since this conversation with Mr. Altman, have you returned to the employer's plant?

A. Yes, we made a try at it, I would say, oh, around the middle of August.

Q. Who made a try at it?

A. The nine of us.

Q. That is the five Stewards—— A. Yes.

Q. And the four committeemen? A. Yes.

Q. And what did you do? [119]

A. We went down to the gate in the morning with our lunch pails and stood there until the first whistle blew. Then when the second whistle blew at 7:30 we walked into Mr. Altman's office, and while we was in there Mr. Altman walked out. Where he went I don't know, or I don't know if anybody else knows. But then a few minutes later I think one of the members of the nine called up Mr. Wood's office, I believe, and asked if we could talk to him, and Mr. Wood and Mr. Altman came over to Mr. Altman's office. And I believe it was Mr. Sherman was the spokesman, and asked Mr. Wood if they were hiring any help, that we were looking for a job. Mr. Wood told him he couldn't put us to work, that we were suspended. So there

(Testimony of Lincoln Frank Olsen.)

was nothing else for us to do. Some of the boys got their overalls and things and out the gate we went.

Q. Now, barking back to the 30th of July, Mr. Olsen, there was a meeting held at 4:15 in the afternoon.

Is there a night shift—or was there a night shift on that day due to work in the plant?

A. Yes, there was; there still is; I imagine there still is. There was a 24-hour shift.

Q. Was any attempt made to have the night shift employees attend this meeting?

A. Yes, there was.

Q. Can you tell us what that attempt was?

A. Well, I and Brother Luchsinger went into Mr. Altman's [120] office and asked him if there was a possibility of having a night shift layoff for a couple of hours and attend this meeting, and they could report back to work when the meeting was over.

Q. Did you receive a——

A. (interposing) And at the time two Supervisors were in the office.

Q. Who?

A. Cecil Carter and Don Stanberry. I heard myself personally that Mr. Carter told Mr. Altman that the kettleroom could shut down, and Mr. Stanberry said that he could see that the other buildings, the toilet department and those that were operating could go if they would report back at six o'clock.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then, what did Mr. Altman say finally to your request?

A. He says that they would go.

Mr. Hecht: What was that? May I have that answer, please?

(The answer referred to was read by the reporter.)

Mr. Rowell: You mean they could go?

The Witness If they wanted to go they could go.

Q. (By Mr. Royster): You jointed the A. F. of L., did you not, Mr. Olsen?

A. Yes, I did. [121]

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions from the A. F. of L.?

Mr. Hecht: I have just one question.

Mr. Rowell: No, I have no questions.

Trial Examiner Ruckel: For the Respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Olsen, you were at one time a CIO Steward at the Respondent's plant, were you not?

A. Not a CIO Steward, no.

Q. An ILWU Steward?

A. No, I was never.

Q. You were never?

A. No. If you are referring back to 96 I was.

Q. 1936?

(Testimony of Lincoln Frank Olsen.)

A. No, 96 was the other local that was in there before they merged with ILWU.

Q. Mr. Olsen, do you recall whether at that restaurant meeting on July 26 any minutes were taken down?

A. Not that I can remember.

Q. Do you recall whether any minutes of the meeting of July 26 were read at the meeting of July 30? A. Not that I can remember.

Q. Mr. Olsen, are you familiar with the agreement dated [122] July 9, 1941, between Colgate-Palmolive-Peet Company and Warehouse Union, Local 1-6, ILWU?

Mr. Rowell: Well, now, Mr. Examiner, I think this attempt was made before and objection sustained to this line of questioning.

Mr. Hecht: No, there was no objection sustained.

Trial Examiner Ruckel: I don't recall any objection to that. I am wondering if it is not redundant, though, I mean, we stipulated that this contract has been entered into.

Mr. Edises: Could it be stipulated—I suspect the purpose is to show the witness' familiarity with certain provisions. Could it be stipulated that this witness and the other witnesses who were among the nine were familiar with the terms of the contract?

Trial Examiner Ruckel: Well, I was wondering what difference would it make if they weren't familiar with the terms? Here is the contract.

(Testimony of Lincoln Frank Olsen.)

Mr. Royster: There is no question but what it was in effect at this time.

Mr. Hecht: Off the record, if we may?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back on the record. Is there another question of the witness?

Mr. Hecht: Yes. [123]

Q. (By Mr. Hecht): Mr. Olsen, did you know that if you were not a member in good standing of the ILWU you could not work at Respondent's plant?

Mr. Rowell: Well, that question is objected to on the grounds previously stated, that it doesn't make any difference whether he knew it or not. The contract is in evidence, and nobody here is maintaining that it was not in effect. It speaks for itself.

Trial Examiner Ruckel: I will have to sustain the objection.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Q. (By Mr. Edises): Mr. Olsen, I hand you Intervener's Exhibit No. 2, which is in evidence, and this has been identified as the minutes of the meeting of July 30, 1945, which I believe you said you attended, did you not? A. Yes, sir.

Q. And I would like to have you look at the third paragraph of those minutes, this here (indicating), and read that and tell me if that comports

(Testimony of Lincoln Frank Olsen.)

with your recollection of what occurred at that meeting?

A. I told that gentleman there that I was the floorman on them meetings and I didn't hear a lot of them things that went on, so I couldn't very well give you a real answer on that. [124]

Q. Well, I want your answer to the best of your recollection, Mr. Olsen.

The minutes read:

"Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shops Stewards laid off by management at request of ILWU officials. If shop Stewards don't work, nobody works. Carried unanimously."

Do you remember if some such motion was made?

A. I believe it was if it is on the papers there.

Q. As a matter of fact, you were a member of a committee of four appointed to carry out the terms of this resolution, were you not?

A. Yes, I was.

Q. Yes. Now, did you vote on any of the resolutions that were presented at this meeting of July 30?

Mr. Tobriner: Objected to on the grounds it is immaterial whether he voted.

Trial Examiner Ruckel: What is the materiality? Hasn't it been covered by a stipulation?

Mr. Edises: No, not this point.

Mr. Tobriner: Well, there has already been admitted into evidence the minutes on it.

(Testimony of Lincoln Frank Olsen.)

Mr. Edises: I am asking him whether he personally voted for any of these resolutions.

Mr. Tobriner: I fail to see how that has any bearing [125] in this case.

Trial Examiner Ruckel: What is the materiality?

Mr. Edises: Well, it is in connection with our defense, in regard to these four so-called committeemen. I don't like to disclose—this is cross examination. I don't like to tip my hand, but I assure the Examiner that if the relevancy does not become apparent as the case progresses, I will gladly stipulate that it may be stricken.

Trial Examiner Ruckel: All right, with that understanding you may proceed.

Q. (By Mr. Edises): Now, the question was whether you voted on the resolutions that were presented?

A. Whether I voted on that one or not I told you I do not know.

Q. You don't remember?

A. Because I was on the floor and it was quite a job on the floor for one man that night.

Q. Now, did you participate in any of the discussion which took place at that meeting?

Mr. Tobriner: The same objection.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Did you take part in any of the discussion? A. No, I didn't.

Q. You didn't say anything? [126]

A. No.

(Testimony of Lincoln Frank Olsen.)

Q. Now, did you participate in the work stoppage which took place?

A. Of course I did, because I was one of the committeemen there when I was appointed to go down there and find out whether or not these five men could go back to work, and that was the answer in that motion there. We got our answer from Mr. Railey that the five men could not go back to work, so automatically we had another meeting.

Q. All right. Now, after you got this answer from Mr. Railey what was the next thing that you did?

A. Well, offhand I would say from there the four of us was suspended, and we changed our clothes. We were in our work clothes at the meeting and we changed our clothes.

Q. I am speaking now after the meeting in Railey's office.

A. That is right. That ended around 11 o'clock, a little after 11, something like that.

Q. Then you changed your clothes?

A. Yes, sir.

Q. Did you have any conversation among you four at that time after your meeting with Railey?

A. Not that I can recall.

Q. Well, then, what was the next thing you did after changing your clothes?

A. Well, then we talked to Mr. Altman and Mr. Railey there [127] by Mr. Smith's office, and

(Testimony of Lincoln Frank Olsen.)

he said that he was sorry it all happened, and he wanted us back to work.

Q. Well, what else was said?

A. That is all I can remember that was said at that moment.

Q. Well, did anybody among your committee say anything?

A. Not that I can recall.

Q. He wanted you back to work. Well, I take it from that that at that time you were not at work, is that correct?

A. At that time we were suspended because Vice President Heide told Mr. Railey in his office that we would—the letters were in the mail, and all they had to do was put my name on the letter and I would receive one.

Q. All right. Now, what was the next thing you did after this conversation with Mr. Railey?

A. I believe I went out on the platform there and talked to the master mechanic.

Q. What was your conversation with him?

A. Well, I believe I told him that I had some tools in that department, and I was under the impression that I was coming back to work, and I was not going to pick them up, and the tools are still laying down there—I hope they are still there.

Q. Now, did you have any conversations with anybody about a work stoppage, or about the proposal not to work until the Stewards got back at that time? [128] A. No, I did not.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then what did you and the other members of the committee proceed to do about this resolution, about "nobody works" after you got your turndown from Railey? How did you go about putting this resolution into effect, what did you do?

A. (No response.).

Q. I am not trying to mislead you, Mr. Olsen, but you have testified that you went to Mr. Railey with the resolution about stopping work if these stewards weren't put back, and that thereafter there was a work stoppage. And now I want to know just how this work stoppage was put into effect. How did you pull the men, in other words?

Mr. Tobriner: I object to that question.

Mr. Rowell: Well, you mean pull the pin?

Mr. Edises: Pull the pin, you can use that expression.

Mr. Rowell: We will stipulate they pulled the pin.

A. We didn't pull any pin, or pull any men. When they seen us walk out without the results, why, you know what occurred yourself.

Mr. Edises: Now, I would like to have answer read, please.

(The answer referred to was read by the reporter.)

Q. (By Mr. Edises): I wish you would tell me what occurred? [129]

A. I was not there.

Mr. Rowell: Well, now, Mr. Examiner, there

(Testimony of Lincoln Frank Olsen.)

is no contest on these facts at all. Nobody is maintaining that these men didn't stop work.

Mr. Edises: I want to know how it happened. We certainly have a right to know those details.

Trial Examiner Ruckel: He may answer.

Mr. Edises: You may answer, Mr. Olsen.

A. If I may answer, I don't know what the real answer is because, like I stated back there, I was on the floor and I didn't know what the real discussion was, what would occur.

Q. (By Mr. Edises): Well, now, Mr. Olsen, you have testified you were in Mr. Railey's office, that he said nothing doing about putting the Stewards back, and you have also just testified, well, then, "we walked out, and when the employees saw there was no results, why, then something happened."

I want you to tell me just what happened.

A. Well, they walked out too, didn't they?

Q. Did you walk along like the pied piper and the employees along behind you?

A. Didn't they walk out too and the plant shut down at noon?

Q. That is what I want to know, just what happened. Did you say anything to the employees?

A. No, I didn't.

Q. Did any of the other committeemen say anything?

A. I don't know whether they did or not.

Q. Let's have your best recollection, Mr. Olsen.

A. I am using my best recollection right now.

Q. And you would like the record to show that you people just walked out of the office and that

(Testimony of Lincoln Frank Olsen.)

nothing was said, and that the employees then followed you out; is that what happened?

Mr. Royster: He didn't say that.

Mr. Tobriner: Objected to as argumentative, and a misstatement of the statement of the witness. I object to the question.

Trial Examiner Ruckel: Well, it may be stricken.

Tell us what happened. The employees walked out?

The Witness: 12 o'clock noon when the whistle blew they went into the meeting.

Q. (By Mr. Edises): What meeting?

A. That meeting of July 31.

Q. And who told them about that meeting?

A. Offhand it must have been voted on the night of the 30th when the committee was appointed.

Q. Well, now, Mr. Olsen, isn't it a fact that after you left Railey's office, you and the other members of your committee, you told the employees that you had not been [131] successful in getting the Stewards back, and that there was going to be a meeting at 12 o'clock noon; isn't that a fact?

A. I can't recall whether it is or not.

Mr. Edises: All right, that is all. Oh, just one other thing.

Q. (By Mr. Edises): Are you familiar with the ILWU's pledge not to engage in any strikes during the duration of the war?

Mr. Rowell: Well, now, that is objected to as immaterial.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: No, Mr. Examiner. I would like to say that the Union will demonstrate in the case of this employee and the three other members of the committee that the union action taken against them was predicated upon their participation in a wartime strike in violation of the pledge of the International Longshoremen's and Warehousemen's Union against engaging in any strikes in wartime. Now, that I submit is——

Trial Examiner Ruckel: Well, the question is as to his knowledge. What difference does his knowledge make?

Mr. Edises: Well, in this sense, Mr. Examiner: That if the evidence would show that this man had no knowledge that there was any "no strike" pledge by the ILWU, I, as one of the attorneys for the ILWU would immediately stand up in this court and recommend that this man be put back to work and be given every cent of back pay that he has lost because then he has been very unfairly dealt with. he has been most unfairly dealt with if he had no knowledge of the ILWU's "no strike pledge." On the other hand, if he did have such knowledge then there is a basis for the Union's action, and that is our case in regard to this man.

Trial Examiner Ruckel: Well, I would be surprised if anyone of the Union lacked knowledge of that pledge, it is the commonest sort of knowledge throughout that these "no strike pledges" were almost univerasIly in effect. I should think we

(Testimony of Lincoln Frank Olsen.)

could assume knowledge on the part of every employee of the existence of that pledge if, in fact, it did exist.

Mr. Edises: I would agree with you, your Honor, but I think the Board ought to have the benefit of the express statement of this employee. I would rather not hold him to any assumed knowledge of that "no strike pledge." I would like to give him an opportunity to testify himself as to whether he knew about the "no strike pledge."

Mr. Rowell: Well, Mr. Examiner, it likewise has appeared by the testimony of this witness that he was suspended before he ever went off work, so it could not have been the case in his case.

Mr. Edises: Oh, the resolution was passed on July 30, Mr. Rowell. [133]

Mr. Rowell: Regardless, the action that was purportedly taken, that is, the so-called leaving work action, occurred after this man had been suspended.

Trial Examiner Ruckel: I am going to sustain the objection on the grounds indicated.

Mr. Hecht: And, Mr. Examiner, now that you have sustained that objection, I think that is part of our case; and I will find it necessary, when it comes time to put on our case, if it comes to that, to have to subpoena Mr. Olsen from his present employment at Lathrop because I am going to ask him the same question in our case, make him our witness for the purpose.

Trial Examiner Ruckel: If there was a "no

(Testimony of Lincoln Frank Olsen.)

strike pledge" it is in the contract, is it not?

Mr. Edises: No, your Honor.

Mr. Hecht: No.

Mr. Edises: It was a matter of resolution passed by the Union, the Union's International Executive Board.

Trial Examiner Ruckel: Was it ever reduced to writing?

Mr. Edises: Yes, your Honor. We would introduce that but that would not in and of itself show knowledge on the part of this witness.

Trial Examiner Ruckel: Weren't the employees advised of that?

Mr. Edises: Certainly. [134]

Trial Examiner Ruckel: Probably by the Company and by the Union.

Mr. Edises: By the Union; certainly anybody who attended Union meetings knew about it.

Trial Examiner Ruckel: The only point I raise is to the materiality of his knowledge: I am not questioning the materiality of the existence of that resolution, and the Company was operating under it.

Mr. Edises: Only this, your Honor: If this man had no knowledge of the "no strike pledge" then he could not be culpable of violating the "no strike pledge" which is the basis on which he was found guilty by the Union.

Trial Examiner Ruckel: I don't know whether that follows or not, if they went on strike whether he knew of it or not, if the Union had agreed not to strike. Ignorance of the law is no excuse. How-

(Testimony of Lincoln Frank Olsen.)

ever, I think we could save time by letting him answer the question.

Mr. Royster: It might be pointed out too, Mr. Examiner, that this was not, as far as the evidence shows, an ILWU strike. They certainly had no responsibility for it.

Mr. Edises: I will say the ILWU had no responsibility for it.

Mr. Rowell: I will withdraw the objection to the question.

Trial Examiner Ruckel: Go back and restate the question. [135]

Mr. Edises: I will restate it.

Q. (By Mr. Edises): The question is, Mr. Olsen, were you aware at the time that this action took place of the ILWU's "no strike pledge" for the duration of the war?

A. Yes, I was, but I was not aware of the fact that I could get suspended by just walking into the Manager's office and asking for five men to come back to work.

Mr. Edises: I will ask that be stricken.

Mr. Tobriner: Just a minute. That is an answer to your question. You have opened it up.

Mr. Edises: What nonsense. That was volunteered, Mr. Examiner. It was not responsive to my question that I asked.

Trial Examiner Ruckel: It may be stricken.

Mr. Edises: Now, just one other matter.

Q. (By Mr. Edises): Mr. Olsen, did you par-

(Testimony of Lincoln Frank Olsen.)

ticipate in a meeting in July 1945 with representatives of the United Mineworkers Union?

A. No, I did not.

Mr. Edises: That is all.

Redirect Examination

Q. (By Mr. Rowell): Were you aware, Mr. Olsen, on the date Mr. Edises was talking to you about, that you could be suspended by the Union and discharged by the Company by [136] merely walking in and asking for the reinstatement of five employees?

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: That is all.

Mr. Royster: That is all.

Mr. Tobriner: One more question, Mr. Olsen.

Mr. Edises: Just a moment.

Q. (By Mr. Tobriner): The time you were suspended——

Mr. Edises (interposing): I want to interpose an objection here. It seems to me it is customary in trial procedure, Mr. Examiner, to have one counsel for each party. Now, if we are going to depart from that procedure I submit we ought to have an understanding on that point because in the interest of the orderly conduct of the trial I think we are entitled to have not more than one attorney ask the question.

Mr. Rowell: That is perfectly agreeable.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Mr. Royster is the only attorney of record with the Board.

Mr. Tobriner: May I ask the question or shall I ask Mr. Rowell to ask the question?

Trial Examiner Ruckel: You are not of record. Do you wish to become of record?

Mr. Rowell: Yes, I think he is. [137]

Mr. Royster: Haven't you entered an appearance?

Mr. Rowell: I made an appearance. Mr. Tobriner is representing the International Chemical Workers Union, the charging union, and I, Mr. Rowell, represent them also. We both represent the same union. We are perfectly agreeable to having one or the other of us and not both ask questions.

Trial Examiner Ruckel: Well, is his appearance of record?

The Reporter: Yes, sir.

Trial Examiner Ruckel: There is no objection I know of to counsel sharing the labor of asking questions.

Mr. Edises: Well, may I differ with you respectfully, your Honor?

I have on many occasions witnessed insistence on the part of courts that only one counsel conduct the examination, one attorney for each side. The reason is that it gives the party two cracks, so to speak, to one for the other side. It also makes for more orderly conduct of the trial.

Trial Examiner Ruckel: Well, I agree with all that, but it is counsel's right, I think, to ask ques-

(Testimony of Lincoln Frank Olsen.)

tions if he wants, and they can divide the labor any way they wish. I would appreciate it if, in general, the examination be conducted by the same counsel.

Mr. Tobriner: Oh, I won't ask the question, Mr. Trial [138] Examiner.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: Nothing further.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Mr. Smith.

HARRY A. SMITH,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Harry A. Smith.

Q. Where do you live, Mr. Smith?

A. Walnut Creek.

Q. What is your occupation?

A. Present?

Q. Present.

A. At present I am a laborer.

Q. And you were employed by the respondent, were you not? A. Yes, sir.

Q. For what period of time did you work for the respondent?

A. I went to work there October 15, 1930.

(Testimony of Harry A. Smith.)

Q. And when were you last employed? [139]

A. Up until July 30, 1945.

Q. July 30, 1945? A. Yes, sir.

Q. Were you a member of the ILWU?

A. I was a member, originally joined the ILA, and we went into the ILWU in 1938, I believe.

Q. And how long did you remain a member of the ILWU?

A. Up until the time of my suspension.

Q. And that was when? A. July 30.

Q. Did you hold any office in that organization?

A. I spent one year on the Executive Board, 1939 or '40. I am not sure.

Q. Did you ever hold a position of steward?

A. I held a steward's position in the plant for two consecutive terms, ending with my suspension.

Q. And when was the first term?

A. 1944.

Q. For the calendar year?

A. Well, the election was along in May, 1943.

Q. You were elected in 1943?

A. And also re-elected in 1944.

Q. And was there any election held with respect to your job in 1945? A. No. [140]

Q. Not prior to your suspension?

A. Not prior to that time.

Q. Did you attend the meeting of July 26?

A. I did.

Q. At the restaurant? A. I did.

Q. Did you invite anyone to attend that meeting?

(Testimony of Harry A. Smith.)

A. I talked to various ones about it. Whether I personally invited anyone, I don't recall.

Q. Do you recall a discussion at that meeting of the Colgate-Palmolive-Peet Employees Welfare Association? A. I do.

Q. Did you participate in that discussion?

A. I listened mostly.

Q. Was the purpose of the Employees Association stated in this discussion?

Trial Examiner Ruckel: Hasn't that been gone over now?

Mr. Royster: It has been.

Trial Examiner Ruckel: Is it worth while going over this again?

Mr. Rowell: Well, nobody will stipulate it was a labor organization.

Trial Examiner Ruckel: I don't know what value the stipulation might have. I suppose these are introductory, but I wonder if we can't just jump right through them. Or if [141] it isn't covered by the stipulation——

Mr. Rowell: Well, it is not covered by the stipulation that that was a labor organization.

Mr. Royster: That is the only purpose in asking the question.

Mr. Rowell: If counsel for the Board doesn't want to go into it, I will ask a few questions along the same line in order to get it proved.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Well, may the witness answer my last question?

Trial Examiner Ruckel: All right. Read the last question.

(The question referred to was read by the reporter.)

A. The name, I believe, is what you are getting at?

Q. (By Mr. Royster): No. I am asking for the purpose of the——

Mr. Rowell: That is what Mr. Edises is getting at.

A. I will answer to the best of my ability.

Trial Examiner Ruckel: What is the purpose of this group?

The Witness: The purpose of this group was mainly—the organization was mainly to hold the group together and [142] give them a name while we were seeking affiliations with some other organization.

Q. (By Mr. Royster): What other kind of organization?

A. Some other union, to be explicit.

Q. Now, Mr. Smith, were you in Mr. Railey's office on July 30? A. I was.

Q. And what took place there?

A. We were called in at approximately two o'clock, and there we were confronted by Mr. Railey,

(Testimony of Harry A. Smith.)

Mr. Altman and five members, I believe, of the Warehouse Union.

Q. By "five members" you mean other employees?

A. No, pardon me. Five officials. And at that time Mr. Railey told us that he had been notified by the union that we were no longer in good standing, and he would have to suspend us until such time as we are in good standing with the CIO.

Q. When you say "us" are you referring to the—— A. Five stewards.

Q. Five stewards. Did you have any conversation with any of the ILWU representatives in Mr. Railey's presence? A. Not at all.

Mr. Edises: Did he fix the date of this?

Mr. Royster: July 30, 2:00 p.m.

Q. (By Mr. Royster): Did Mr. Railey tell you why you were [143] suspended from the ILWU?

Mr. Hecht: That has been asked and answered, I think.

Trial Examiner Ruckel: Do you have an objection?

Mr. Hecht: No. Pardon me.

Mr. Edises: I don't think that has.

A. Nothing outside of the fact that we were not in good standing with the union.

Q. (By Mr. Royster): You attended the meeting of employees on the afternoon of July 30, did you not? A. I did.

Q. Have you made any attempt to secure reinstatement?

(Testimony of Harry A. Smith.)

A. On August 17 I returned to the plant accompanied by the—in the company of the nine—eight other members that were suspended, and asked for reinstatement.

Q. And did you ask that reinstatement of Mr. Altman and Mr. Wood?

A. Mr. Sherman was our spokesman and he asked Mr. Wood.

Q. And what answer were you given?

A. It was impossible for them to put us back to work.

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: I have nothing.

Trial Examiner Ruckel: For the respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Smith, I think you testified that you have been a steward, and also held another position. I don't recall—what was your other position?

A. On the executive board of the union.

Q. On the executive board. Do you have knowledge of a certain contract dated July 9, 1941, between the respondent and the ILWU?

A. I have.

Mr. Rowell: Well, I make the same objection to this contemplated line.

Mr. Hecht: He has answered the question.

Mr. Rowell: Well——

The Witness: I am sorry.

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: The answer may stand.

Mr. Rowell: Well, I will make an objection to the next question.

Q. (By Mr. Hecht): Do you know, Mr. Smith, that under Section 3 of the contract you cannot work for the respondent unless you are in good standing with the HLWU?

Mr. Rowell: The same objection as to the previous question of a previous witness.

Trial Examiner Ruckel: I will allow it this time, but I think we can assume that the employee has knowledge of it. Even so, as I pointed out, it is immaterial. [145]

Mr. Rowell: Well, now, are you going to ask this question of every witness that goes on the stand?

Mr. Hecht: I certainly am, Mr. Rowell.

Mr. Tobriner: Did I understand the Trial Examiner now to rule that it was admissible?

Trial Examiner Ruckel: I said he might answer.

Mr. Tobriner: I understand the ruling previously was to the contrary.

Trial Examiner Ruckel: Well, to be consistent, I should not have him answer, but counsel for the company is very interested in it, and I thought that maybe he might cease and desist in asking further witnesses if I let him ask this witness.

Mr. Hecht: I won't ask it of other witnesses if I can get a stipulation, Mr. Examiner, that the contract binds and applies to all the complainants whether they had knowledge of it or not.

(Testimony of Harry A. Smith.)

Mr. Tobriner: Well, the contract speaks for itself, Mr. Hecht. Aren't you belaboring a legalism?

Mr. Hecht: No, I don't think so.

Mr. Edises: Well, Mr. *Edises,* I feel that the stipulation that counsel for the company is asking for is one that asks for a legal conclusion, and it would be, perhaps, a little broad for that reason. If I could suggest that there be a much less sweeping stipulation to the effect [146] that the witnesses knew there was a clause in the contract providing that only members of the ILWU in good standing could be employed at the plant, I think that they all did that, and certainly there could be no prejudice to anybody from any such stipulation.

Mr. Royster: I don't see anything wrong with it.

Mr. Hecht: I would be agreeable to such a stipulation.

Mr. Tobriner: We don't see any materiality to it. Suppose they did know there was a clause, how does that affect this case?

Trial Examiner Ruckel: Stipulate to it anyway and make your reservation as to its materiality.

Mr. Royster: I would have to make a reservation with respect to one of the alleged 8 (3's), that is, Rose Gilbert. With the exception of her I would stipulate.

Mr. Hecht: That is agreeable, Mr. Royster.

Trial Examiner Ruckel: Well state the stipulation, then.

Mr. Edises: Would you read what I proposed there?

(Testimony of Harry A. Smith.)

(The stipulation referred to was read by the reporter.)

Trial Examiner Ruckel: May we have that stipulation then, with the exception of this young lady?

Mr. Hecht: Certainly, that is agreeable with me.

Mr. Edises: It is agreeable with me.

Mr. Royster: The Board will stipulate except as to [147] Rose Gilbert Schneider.

Mr. Tobriner: Our position is, sir, that this is immaterial, and that we think the original rulings of the Trial Examiner were proper, and consequently we don't feel free from any standpoint of our clients to make any such stipulation. In other words, we feel that it is not up to us to take the burden of that stipulation.

Trial Examiner Ruckel: I don't see why the previous ruling of the Trial Examiner—you could make a reservation as to its materiality. If it is a fact, let's get the fact and I will make the disposition of its materiality.

Mr. Tobriner: I don't know it is a fact as far as these witnesses are concerned. I wouldn't assume the responsibility of speaking for them. I don't think it makes a bit of difference, and I think that Mr. Hecht's position is utterly unsound. If he is going to persist in it, then let him persist in it as far as I am concerned.

Trial Examiner Ruckel: Well, there is no stipulation. I will let the witness answer this question. I can't say what I will do with future witnesses, but I am firmly of the opinion that it makes no

(Testimony of Harry A. Smith.)

difference whether they knew it or not. They were all under the contract, at least as to its provisions.

Mr. Hecht: Let me state this: It seems to me that this attempt at reinstatement, at seeking employment again [148] at the plant is a pure sham in view of the fact that all of these people knew, at least the ones that were stewards who had been members of the executive committee, that it was a mere gesture to go into ask Railey or Altman for reinstatement in view of a contract they knew existed.

Mr. Rowell: Well, do you maintain that these people were, as a matter of fact, not in good standing in the union?

Mr. Hecht: I don't maintain that they knew they were not in good standing.

Mr. Rowell: They don't know it at the present time. We maintain they are still in good standing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Now, let's proceed with this witness and ask him, if you want, if he knew of this provision of the contract.

Mr. Hecht: All right.

Q. (By Mr. Hecht): Mr. Smith, let me show you this contract, which is Board's Exhibit No. 7, and will you look at Section 3.

Mr. Tobriner: Our objections, I take it, will run to this whole line of questioning?

Trial Examiner Ruckel: Yes. There is only one question yet. We are still having trouble with that. [149]

(Testimony of Harry A. Smith.)

A. (Examining document): May I answer that with a "Yes" or "No", or can I qualify my statement?

Trial Examiner Ruckel: You can qualify your statement.

Mr. Hecht: Surely.

The Witness: I will answer that I am perfectly aware of that statement in there, but I will question what is meant by "good standing."

Q. (By Mr. Hecht): That is perfectly all right with me, Mr. Smith. However, on August 17, 1945, when you applied for re-employment you knew such a clause existed in this contract?

A. Certainly.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Smith, counsel asked you to state the purposes of the Employees Welfare Association, and you answered.

Now, I would like to ask you whether there was any purpose connected with this word "welfare"?

A. To answer that I would say directly that our union affairs were very closely related to the welfare of the people in the plant, and I think it can be so construed.

Q. And did you state that at this meeting on July 26?

A. I had nothing to say, I believe, at that meeting.

Q. So that what you are stating now is simply your opinion, is that right. [150]

A. My opinion.

(Testimony of Harry A. Smith.)

Q. Did anybody say anything about "welfare" at this meeting?

A. There was discussion regarding what to call the group, and that was decided on. Just exactly what was said I do not recall. It was some time ago.

Q. Were you present when the employees walked out at noon on July 31? A. No.

Q. You were not present? A. No.

Q. Did you participate in any meetings during the walkout, any meetings of the employees?

A. Yes, I attended them all.

Q. You attended them all? A. Yes.

Q. And did you participate in them?

A. Very little, because I felt that it was not my place to participate as the rest of the employees were voting on regarding whether they would back up these stewards or not.

Q. Did you vote yourself?

A. I certainly did not.

Mr. Edises: That is all.

Mr. Hecht: Just one question, Mr. Smith, that I forgot [151] to ask you.

Q. (By Mr. Hecht): Do you recall whether there were any minutes made of the action taken at the meeting of July 26? A. I do not recall.

Q. Did you attend the meeting of July 30?

A. I did.

Q. Do you recall whether any mention was made of such minutes at the meeting of July 30?

A. I do not recall.

Mr. Hecht: Thank you. That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

You have no other witnesses here that you are anxious to call this evening?

Mr. Royster: No, none that I must call this evening, Mr. Examiner.

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:45 p.m. an adjournment was taken to Wednesday, February 6, 1946, at 9:30 a.m.) [152]

[Title of Board and Cause.]

Wednesday, February 6, 1946.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m. [153]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Call Mr. Albert Zulaica, Mr. Examiner.

ALBERT ZULAICA,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the

(Testimony of Albert Zulaica.)

record, Mr. Zulaica? A. Albert Zulaica.

The Reporter: Will you spell your last name, please?

The Witness: Z-u-l-a-i-c-a. 2419-A Tenth street.

Q. (By Mr. Royster): What city?

A. Berkeley.

Q. What is your occupation, Mr. Zulaica?

A. Well, I was a leaderman there at the plant.

Q. Your occupation now?

A. Well, I am not working right now.

Q. And you were employed by the respondent?

A. Yes, I was.

Q. And for what period of time were you employed?

A. From February 20, 1928, to September 1, 1945.

Q. Were you a member of the CIO union there?

A. Yes, I was.

Q. And for how long were you a member?

A. Well, ever since they have been in control of the plant.

Q. And in what department were you employed?

A. The Toilet Department.

Q. Do you know an ILWU representative by the name of Gonick, Lewis Gonick?

A. Yes, I do.

Q. Do you know Ed Bopp?

A. Yes, I do.

Q. Who is Ed Bopp?

A. Well, he is present right now. I think he is

(Testimony of Albert Zulaica.)

a leaderman there right now on the framing department.

Q. As far as you know, did he hold any office in ILWU? A. He is now.

Q. What is that?

A. He was not at the time.

Q. Well, what is he now?

A. He is a steward, I believe.

Q. Now, on July 30, 1945, do you know whether or not he held any office in the ILWU?

A. Well, he was appointed that day.

Q. Appointed what? A. A steward.

Q. On July 30, 1945, did you have a conversation with Mr. [157] Gonick and Mr. Bopp?

A. Well, it was not really a conversation. They came over to me, and Mr. Gonick pointed to Bopp, he says, "This is your new steward," and handed me a leaflet, you know, a warning leaflet. He says——

Q. (Interposing) Well, now, just a moment, Mr. Zulaica. You say that a leaflet was handed to you.

I show you Board's Exhibit 4. Is that the leaflet you have referred to?

A. (Examining document) Yes, it is.

Q. And where did this occurrence take place?

A. In the Toilet Department, right on the floor there.

Q. And about what time of the day was it?

A. Oh, it must have been about, oh, about

(Testimony of Albert Zulaica.)

twenty-five minutes to three or twenty minutes to three.

Q. In the afternoon? A. In the afternoon.

Q. And was there anything said to you when this leaflet was handed to you?

A. Yes, Mr. Gonick says—handed me that leaflet and he says, "I wouldn't go to the meeting if I were you," he says, "because you know you will lose your job."

Q. Now, was there anyone else present when Mr. Gonick made that remark other than Mr. Bopp and you?

A. No, there wasn't, that is right. [158]

Q. You attended a meeting on the afternoon of July 30, 1945? A. Yes, I did.

Q. Was Charles Grube at that meeting?

A. Yes, he was.

Q. Did you join the A F of L, Mr. Zulaica?

A. Yes, I did.

Q. Did you have an A F of L button?

A. I did.

Q. And did you wear it? A. Yes.

Q. Did you wear it at work? A. I did.

Q. And where did you wear it?

A. Right in front of my overalls.

Q. Did you talk to other employees about union matters?

A. Well, it is not that I talked to them. Most of them came to me asking me questions, and I gave

(Testimony of Albert Zulaica.)

them my idea of what I thought would be the right thing to do.

Q. And what was that idea?

A. Well, I thought that it would be a good thing to pull away from the CIO.

Q. And you expressed that opinion to other employees? A. Yes, I did.

Q. Now, did you work the month of August, from August 3 on? [159]

A. Yes, I did, I work all the month of August.

Q. Did you work the month of June 1945?

A. Yes, I did.

Q. Did you work the month of July 1945?

A. I did.

Q. Now, during the month of June did you see any ILWU representatives in the plant?

A. Very seldom.

Mr. Edises: Now, just a moment.

Mr. Hecht: Incompetent, irrelevant, and immaterial.

Mr. Edises: I object to that.

Trial Examiner Ruckel: During the month of June?

Mr. Royster: Yes.

Trial Examiner Ruckel: Did he see——

Mr. Royster: ILWU representatives in the plant?

Trial Examiner Ruckel: I suppose this is preliminary.

Mr. Edises: It is immaterial to the issues of the case.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: Is it preliminary?

Mr. Royster: It is preliminary.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Royster): During the month of July 1945 did you see ILWU representatives in the plant?

A. Very seldom.

Q. During the month of August 1945 did you see them in the [160] plant?

A. Quite often.

Q. Can you name those that you saw?

A. Well, the first day——

Q. I am not speaking particularly about specific dates at the moment, but if you will name those you saw during that month.

A. Well, I saw the President, Lynden, and Lynch and Gonick, Duarte, and Mr.—I don't know how to say that name—Cleichman. I don't know how——

Q. Gleichman. And how frequently did you see these representatives?

A. Well, they were there most every day in the month of August.

Mr. Hecht: Pardon me. Just a moment, Mr. Royster.

Do you intend to tie this conversation up of Ed Bopp and Duarte with Mr. Zulaica so as to bring it home to the company, or is that going to remain as it is?

Mr. Royster: No more of that at present.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the purpose of this testimony?

Mr. Royster: The purpose of the testimony is to show the—are you speaking now of the conversation with Bopp and——

Trial Examiner Ruckel: No, the fact there were representatives [161] there in August which were not there in July and June.

Mr. Royster: I am going to show that the ILWU conducted a campaign in the respondent's plant during the month of August, that it appears to be a campaign I think will be apparent from the fact that they were there almost daily during the month of August, while in June and July they were not. The contrast will come when I will show that A.F. of L. representatives were not permitted to go through the plant as the ILWU representatives were. I think it is pertinent for that purpose and in support of one of the allegations in the complaint.

Trial Examiner Ruckel: Go ahead.

Mr. Hecht: Mr. Examiner, may I reserve a motion to strike the first part of the testimony referring to the conversation had between Mr. Zulaica and Mr. Ed Bopp and Mr. Duarte inasmuch as there is nothing there concerning the respondent, Mr. Bopp not being any kind of an executive officer of the respondent, or in any way connected with respondent other than as an employee of the company.

Trial Examiner Ruckel: Well, it is obvious that

(Testimony of Albert Zulaica.)

those statements, without being tied up with other evidence, do not bind the respondent.

Mr. Royster: It is all part of the same pattern, however, Mr. Examiner. It happens to be a specific instance of [162] campaigning.

Mr. Edises: I submit he has not shown any campaigning on the part of those people at all. So far as the record shows those people were there, as they had the right to be under the contract which made them bargaining representatives for the employees.

Trial Examiner Ruckel: Mr. Hecht is referring, and so was I, to the statements made by the Stewards with respect to attendance at a meeting, wasn't it?

Mr. Hecht: Yes. In other words, the respondent is not being charged with deterring Mr. Zulaica from attending the meetings, so it has no bearing of materiality here.

Mr. Royster: I don't agree it has no bearing of materiality, but I will agree we don't expect by that testimony to show the respondent discourged the employees from attending this meeting.

Mr. Hecht: In other words, it is part of your pattern of campaigning, Mr. Royster?

Mr. Royster: Yes, sir.

Mr. Hecht: And for that purpose only?

Mr. Royster: Yes, sir.

Mr. Hecht: Then I withdraw my motion, Mr. Examiner.

Q. (By Mr. Royster): Now, you have named

(Testimony of Albert Zulaica.)

ILWU representatives who appeared at the plant almost daily during the month of August. [163]

A. Yes.

Q. Now, what were they doing in the plant, if you know?

A. Well, I didn't see them do anything. When I happened to see them they were just walking around.

Q. Just walking through the plant?

A. That is right.

Q. Now, do you know Charles Leacock?

A. Yes, I do.

Q. And you have testified that you know Hack Gleichman? A. That is right.

Q. Who is Charles Leacock?

A. Well, he is another Steward at the plant.

Q. Did you have a conversation with Leacock and Gleichman on August 11, 1945?

A. Yes, I did.

Q. Now, where did this conversation take place?

A. Right there in the Toilet Department.

Q. And do you recall what time of day it was?

A. I can't be exact, but it must have been about between 4:30 and 5:00 in the afternoon.

Q. Was there anyone present other than Leacock, Gleichman, and yourself?

A. Well, not close by, but the whole unit—by that I mean there were three machines that were running at the time, that is the unit that I am in charge of—and they all saw [164] them talk to me.

(Testimony of Albert Zulaica.)

Q. Who is the foreman in that department?

A. Mr. Mason.

Q. And was Mr. Mason present?

A. No, he was not.

Q. And was Mr. Stanberry present?

A. No, he was not.

Q. What was the conversation?

A. Well, Leacock was the one that came to me first, and he says to me——

Mr. Edises: Excuse me. I am a little bit late with an objection, but the foundation laid so far shows no representative of the respondent to have been present, and I take it that any conversation that may have gone on between Union representatives or between subordinates could have no possible bearing on any of the issues in the case. How could it possibly be attributable to the respondent or bind the respondent?

Mr. Royster: Well, now, Mr. Examiner, if the testimony which this witness is about to give relates solely to matters of campaigning, even then I contend that it is admissible under the issues as drawn here.

Mr. Hecht: I would say this to you, Mr. Royster, that I would be perfectly willing to stipulate that both sides campaigned and distributed pamphlets. [165]

Mr. Royster: But if it should develop that the conversation which the witness is about to relate was brought to the attention of management, then it is admissible for another purpose, and so I ask

(Testimony of Albert Zulaica.)

that I be permitted to continue with my examination along this line.

Trial Examiner Ruckel: You may continue. I will entertain a motion to strike.

Mr. Hecht: All right.

Q. (By Mr. Royster): Now, what was the conversation, Mr. Zulaica?

A. Leacock was the one that came to me first, and these are the exact words that he said, I will never forget them: He said, "I have absolute proof that you have been intimidating people and passing out leaflets," he said. And my answer to that was——

Mr. Edises: What was that? I can't hear you.

The Witness: He said to me that he had absolute proof that I was intimidating people and passing out leaflets, and my answer was that he was crazy, that I had the proof that he was out of his mind, that I could prove that right then and there. And then he says, "Well,—" he says, "this is not the place or the time to present the proof that I have against you," he says, "but the time will come."

And at that time Mr. Gleichman—I can't say that name to save my soul—Gleichman, then he came, and [166] Leacock pointed to me, he says, "This is the man." Then Mr. Gleichman started with—he says, "These are very serious charges against a fellow in your position," he says, "because you have been with the company for how long, did you say?"

(Testimony of Albert Zulaica.)

I said, "17 years." I have been there a little over 17 years, but I said "17."

He said, "Well, there you are." He says, "You have nothing to gain and everything to lose by listening to an A.F. of L. man who has nothing to offer you, only promises that he cannot fulfill," and he says, "On the other hand, you have what the CIO has given you," he says, "more money, better working conditions, and the protection of a strong International."

Then he says, "I think you fellows have been misled by Sherman, Marshall, and Thompson," he says, "Now, take Thompson, for instance," he says, "do you remember that meeting that you had on July 30?" He says, "When he made that long speech." I said, "Yes." He says, "Well, do you know what he did?" I said, "No. What did he do?" He says, "Well, right after he spoke he went into the smoking room and as soon as he walked in there he says, 'How did I sound, boys? Pretty good, huh?' "

He says, "That is not the kind of man that you want." He says, "You want men that will fight for you, not boast that they can talk." [167]

Then he says——

Trial Examiner Ruckel (interposing): Can't we cut this short?

Mr. Royster: This is the whole conversation, Mr. Examiner. I think that it all should go in.

Mr. Edises: Mr. Examiner, it is certainly very

(Testimony of Albert Zulaica.)

interesting, but it doesn't seem to me to have anything to do with unfair labor practices.

Mr. Royster: Just wait, Mr. Edises.

Mr. Edises: Well, all right, I am ready to wait.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to——

Mr. Royster (interposing): I think he has about come to the end of it.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to try to persuade him that the CIO was better than the A.F. of L.? Wouldn't that summarize what he tried to say?

The Witness: Yes, that is what he tried to say.

Do you want me to continue, Mr. Examiner?

Mr. Tobriner: Let him finish. We will be through in just a second.

Trial Examiner Ruckel: If there is something important he said that is a little different in quality, all right. [168] What else did he say?

The Witness: Well, he says, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those AF of L buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an AF of L button."

Trial Examiner Ruckel: Most of them what?

The Witness: Most of them were wearing AF of L buttons.

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes.

(Testimony of Albert Zulaica.)

Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them." And I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the CIO."

Then he says to me, "Are you an enemy of the CIO?" and I said, "No, I am not. I praise the CIO, they have a very good policy," I said, "but it is the officers of that local that makes it so hard for us to get along." And then he says, "Then you won't change your mind?" and I said, "No, absolutely not, not until you people at the office do the [169] right thing for us."

And I said, "By the way, I got work to do," and with that I left him.

Mr. Hecht: Mr. Examiner, may I move to strike all of that as not bearing upon the issues of the case?

Mr. Royster: I propose to tie it up, Mr. Hecht, immediately with the respondent.

Trial Examiner Ruckel: Motion denied at the present time.

Mr. Edises: I would like to join that motion.

Q. (By Mr. Royster): Now, did you report this conversation to anyone?

A. I couldn't report that conversation right then because there were no officials of the company pres-

(Testimony of Albert Zulaica.)

ent at the time. They had all gone home. But on Monday morning I reported it to Mr. Mason.

Q. And who is Mr. Mason?

A. He is the foreman of the Toilet Department.

Q. Well, what did you tell Mr. Mason? I don't want you to necessarily give the exact words of what you told him, but what portion of this conversation, if not all of it, did you report to Mr. Mason?

A. Well, what I really wanted to find out at the time was—like I said to Mr. Mason, that I wanted to know if those people had a right to come in the plant any time they felt [170] like it. And I said, "I would like to have you talk to Stanberry, or Altman, and find out what it is all about." That is all I said to Mason.

Q. Well, did you have any further conversation with Mr. Mason?

A. He came to me about two or two and a half hours later, and he told me that he had spoken to Mr. Stanberry and that Stanberry said that the reason we were having so much trouble was because we were wearing AF of L buttons.

Trial Examiner Ruckel: Who is Stanberry?

Mr. Wood: A supervisor.

Mr. Royster: Assistant Superintendent, according to Mr. Wood's testimony.

Q. (By Mr. Royster): Well, did you have any conversation with Mr. Stanberry?

A. Well, just a few words. I think it was in the afternoon.

Q. Of what day?

(Testimony of Albert Zulaica.)

A. That same day, that Monday, August 13.

Q. All right.

A. He was coming from the Seafoam Department, and he was in kind of a hurry, and I asked him if I could have a word with him. And I will say this much for him, he always stopped to listen to anyone that wants to talk to him even if he is in a hurry. So he stopped. Then I told him, I said, [171] "Did Mason talk to you?" He said, "Yes," he says, "and I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union." And he just went by.

Q. All right. Now, were you in Mr. Railey's office on September 1? A. Yes, I was.

Mr. Hecht: May I renew my motion to strike all of that testimony, Mr. Examiner?

Mr. Edises: I would like to join in that motion, Mr. Examiner. The conversation, in the first place none of the alleged threats which were attributed to Mr. Gleichman have in any way been brought home to the company. There is a statement to the effect that "The trouble that you people are in—", referring to the controversy then going on between the CIO and AF of L, "results from the fact that you people are wearing AF of L buttons," but there has been absolutely no contention of any threat, express or implied, on the part of the company. I

(Testimony of Albert Zulaica.)

would like to point out that at that time a petition had been filed by the AF of L Union and there was a pending question of representation.

Mr. Hecht: In addition, may I say, Mr. Examiner, that it was the truth that Gleichman spoke, and it is probably [172] the truth that Gleichman spoke to Mr. Zulaica because he was wearing an AF of L button.

Trial Examiner Ruckel: Well, he said most of those in the plant were wearing AF of L buttons. It may stand.

Mr. Royster: Now, I believe I had posed a question to the witness when the objection came. Suppose I repeat it.

Q. (By Mr. Royster): I had asked the witness if he was in Mr. Railey's office on September 1, and I believe he replied in the affirmative.

Is that correct? A. Yes, sir.

Q. Now, will you tell us what took place, or first tell me who was in Mr. Railey's office besides yourself, as nearly as you can recall?

Mr. Edises: Did he fix the date of that?

Mr. Royster: That was on September 1, 1945.

A. You mean the ones that were supposed to be suspended that day?

Q. (By Mr. Royster): I think it will be sufficient if you will just state the company representatives who were there.

A. Oh, Mr. Railey, Mr. Wood, Mr. Altman, Mr. Carter, and Mr. Stanberry.

(Testimony of Albert Zulaica.)

Q. And there was, as I understand it, a number of other employees there?

A. That is right. There were 18 of us. [173]

Q. Did Mr. Railey say anything at that time?

A. Well, he did say—spoke two or three different times.

Q. And do you recall what he said?

A. Well, one time, I remember something that stuck to my mind, that he said, "You must remember that I didn't want you to join a union in the first place." He says, "Now you have your union, you have to pay the consequences."

Q. Well, what was the occasion for——

Mr. Hecht: Just a moment.

Mr. Royster: Yes.

Mr. Hecht: I move to strike that. Whatever Mr. Railey's opinion was as to what he had not wanted them to do has nothing to do with the present case.

Mr. Royster: I don't know whether it has or not. I think it may be a very significant remark, and it is entitled to the consideration of the Board.

Mr. Hecht: I am making a motion to strike, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Mr. Royster: What was your ruling, Mr. Examiner?

Trial Examiner Ruckel: I said, "It may stand."

Q. (By Mr. Royster): Now, what occasioned this remark of Mr. Railey's?

Mr. Edises: I object to that.

(Testimony of Albert Zulaica.)

Mr. Royster: All right. I will withdraw it.

Q. (By Mr. Royster): What were you told when you first came [174] into Mr. Railey's office?

A. Well, no one in particular said anything to me.

Q. Well, were you told that you were suspended?

A. Oh, well, the foreman was the one that went up and got me first, told me that I was wanted in Mr. Railey's office, and then when we got downstairs I believe it was Mr. Wood—I don't recall exactly whether it was Mr. Wood or Mr. Railey who read that letter.

Q. Now, just a moment.

A. That was sent by the CIO.

Q. Is this the letter that was read to you, or that is a photostat, of course, but is it?

A. Yes, I have one.

Mr. Royster: I ask that this be admitted in evidence, Mr. Examiner, as Board's Exhibit 10.

Mr. Hecht: No objection, Mr. Examiner.

Trial Examiner Ruckel: Has other counsel seen it? No objection?

Mr. Edises: No objection.

Trial Examiner Ruckel: Board's Exhibit 10 will be received.

(Thereupon the document above referred to was marked Board's Exhibit 10 and received in evidence.)

Q. (By Mr. Royster): Your testimony is, then,

(Testimony of Albert Zulaica.)

that Mr. Wood or Mr. Railey read this letter to you? [175]

A. Yes, sir.

Q. To all the employees assembled?

A. Yes, that is right.

Q. Then Mr. Railey made another remark about which you have testified? A. That is right.

Q. Was there any other conversation in the presence of the company officials which you now recall?

A. Well, most everybody tried to speak at the same time, the officials of the company and the men, the people that were supposed to be suspended, so sometimes you just couldn't make heads or tails of what was going on because somebody was talking to somebody else, like we can say Mr. Railey was answering a question to one and Mr. Altman to another and so forth and so on.

Q. Did you hear Mr. Wood make any statement at this meeting?

A. Yes, he did. He made a statement saying —I don't recall the exact words, but he said something like, "If you had kept this about the A. F. of L. quiet this wouldn't have happened to you, see," I think. Well, it was words different, but I just can't recall the words, though.

Mr. Hecht: I move that that go out. It is too insubstantial in the witness' own mind to have the Respondent bound by that.

Mr. Royster: The witness has no doubt in his mind [176] about what was said. He was in doubt as

(Testimony of Albert Zulaica.)

to the exact words, but he summarized the sense of it. I certainly oppose your motion.

Trial Examiner Ruckel: It may stand.

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I would like to move to strike the witness' testimony with regard to various conversations that he has related on the ground in the first place that they did not show any conduct on the part of the Respondent which could be deemed an unfair labor practice. It is quite apparent that none of these statements were in any way construable as threats or intimidation. It is quite obvious from the content of the conversation that they all had reference to the demand by the CIO that these people be dismissed, and the Company's view that under the closed shop contract they were required to honor that request, and consequently they cannot be advanced by the Board as evidence in support of any alleged 8(1) which implies an attempt to coerce or to intimidate rather than to, as here, follow the terms of what is conceded to be a valid and existing contract.

For that reason, I move to strike all of the testimony of this witness as to conversations with various persons.

Mr. Hecht: And, Mr. Examiner, in particular I would like to have stricken as no part of the issues in this case [177] the conversation between Gleichman, Duarte, Bopp, and Mr. Zulaica, the witness now on the stand.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What do you have to say, Mr. Royster?

Mr. Royster: Well, Mr. Examiner, everything that this witness testified to is in support of some one of the portions of the complaint. His conversation with Bopp and Gleichman on July 30 showing determination on the part of the ILWU to impose some sort of penalty on employees who attended this meeting. His conversation with Gleichman and Leacock on August 11 shows in the mildest sense of a conversation they were campaigning. Other evidence yet to come will show that the A. F. of L. was not permitted to so campaign. Again, there were threats against this man's job security by the ILWU. The report was made to the company of the campaigning that was being conducted.

Mr. Hecht: No report of the campaign had been made, Mr. Royster, a report of a conversation——

Mr. Royster: The evidence is in, I suppose, and speaks very clearly.

Mr. Hecht: You characterized it as a campaign; it was a conversation. There was a report of one conversation.

Mr. Royster: It was a conversation. A conversation can be construed however the reader wants to construe it.

Mr. Hecht: Refresh my recollection. What was that [178] conversation?

Mr. Royster: On August 13, Stanberry, the Assistant Superintendent, told the witness that his dif-

(Testimony of Albert Zulaica.)

ficulty was occasioned by wearing the A. F. of L. button, he could keep it in his heart but not to wear it out on his coat. Pretty much the same thing was told him by his foreman, Mason. Now, we come to September 1. The man is advised that he has been laid off. Mr. Railey makes a remark, "I didn't want you to have a union in the first place; now that you have got it you can take the consequences."

Mr. Edises: That was not quite it.

Mr. Royster: That is my recollection of the witness' testimony.

Mr. Hecht: No, he said, "I didn't want you to have a union in the first place," that is as I recall.

Mr. Royster: "Now that you have got it you can take the consequences."

Mr. Edises: He didn't say, "you can take the consequences." "These are the consequences," or something like that.

Mr. Royster: Mr. Wood said, "If you had not" —well, my memory doesn't run with sufficient clarity to just what Mr. Wood said. I will have to have my memory refreshed from the transcript, what Mr. Wood is alleged to have said on this occasion. [179]

Mr. Edises: He said, according to my notes, "If you had kept this A. F. of L. move quiet——"

Mr. Royster: Yes.

Mr. Edises: Apparently he said, "Not coming out openly this wouldn't have happened to you."

Mr. Tobriner: "You would not have had this trouble."

Mr. Royster: I think that is very significant.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the significance?

Mr. Royster: The significance is this: that at the time when the Company is putting into effect a request of the ILWU to discharge these employees it shows almost beyond conjecture, to my way of viewing the evidence, that the Company knew the reason these men were being laid off was because of their A. F. of L. activity. Now, there may be another inference to be drawn there, but my mind is not of sufficient fertility to see what it is.

Mr. Edises: Mr. Examiner, I would like to say that everything that has been said or attributed to the Company representatives is perfectly consistent with the theory of the case that we frankly admit. We admit that everything that happened here was pursuant to the contractual relations between the Company and the ILWU. We make no denial of that. The ILWU tells the employees, "You are not in good standing under the contract."

Don't forget that there was a petition for [180] certification filed at this particular time, that was part of the representation conflict going on between the parties. The Company informs the employees that their suspension is the result of the fact that there is a closed shop contract in effect. The various remarks of the Company representatives, far from showing any desire to penalize these people, actually to my mind shows a desire to protect them. It in effect says, "We don't want to do this. We are doing it is a result of our contractual obliga-

(Testimony of Albert Zulaica.)

tion, and we regret the necessity. If this move of yours had not come out openly, perhaps this would not have taken place."

Now, all that is on the basis of the accuracy of this witness' testimony.

Trial Examiner Ruckel: Yes. Well, that is what we are discussing.

Mr. Edises: But it seems to me that everything that has been said here goes to the legal question in the case rather than to any 8(1). In other words, was the contract a valid contract, and were the actions taken pursuant to it, or were they not?

Mr. Royster: It is not the question in the case, Mr. Edises, whether or not this contract is valid.

Trial Examiner Ruckel: Let me say that this, while it was offered originally as 8(1), this evidence doesn't impress me particularly as constituting interference or [181] coercion on the part of the respondent. It seems to me that the more important effect of the evidence is—impinges on the factor of knowledge of the Company as to the reasons for these employees being in bad, so to speak, with the contracting union as evidence of the Company's motive or state of mind at the time it separated them from the payroll. That was the point that counsel for the Board emphasized, and that is the point that I am interested in. I am interested in the standpoint of Company knowledge of what was going on. Now, it is true that there is a contract, but the whole theory of the Board's case, I think, is that irrespective of a contract any em-

(Testimony of Albert Zulaica.)

ployee at any time has the right to join, has the right to agitate for any other labor organization, that if that were not the case that there would never be a change in a bargaining representative, just as in the national picture there would never be a change in administration if one were not free to propagandize for some other party or for some other labor organization. That doesn't mean that they are not obligated to maintain their membership in the labor organization which has the contract. It only means that they are privileged to express their support of some other labor organization at the same time.

Now, the respondent comes in, if he separates the man from the payroll because he has failed to maintain his dues, or failed to maintain his good standing, we will say, that, [182] as I understand the cases, is all right, but while he doesn't know, or shouldn't, isn't in possession of knowledge which would lead him to know the reason why he was not in good standing was that he was advocating some other labor organization, or had voted adversely to the contracting union in the previous election, which sometimes happens. The theory of the Board's cases, I think, is that if there is an election in the plant and a certain union, the CIO is elected, then the CIO cannot go around and under the guise of a closed shop contract expel from work in the plant employees who had voted for the A. F. of L. at that election. It is true enough the CIO becomes a representative of all of the employees no matter how

(Testimony of Albert Zulaica.)

they voted so long as they are in the unit, and those employees, if there is a closed shop contract, have to maintain their membership in good standing in the CIO, but that is not to say that the CIO can go around and expel employees who voted against it at the election, or took some other activity on behalf of the A. F. of L. at some future time.

Mr. Edises: Well, Mr. Examiner——

Trial Examiner Ruckel (Interposing): Now, the question is: What did the Respondent come to know? If it believed at the time that it separated these men that they had failed to maintain their membership in good standing, but didn't know the reason for it, that is one thing. But if the [183] Company knew the reason why they were no longer deemed to be in good standing was that they had voiced support of some other labor organization, then that is something else, and that would be the Board's case.

Mr. Edises: Well, I would like——

Trial Examiner Ruckel (Interposing): Now, this testimony from the Board's point of view bears on that situation, that is, they say the statement of Mr. Wood and others indicate that they knew that the reason why these employees were in bad was that they were advocating some other labor organization, and not that they were in bad standing because of some——

Mr. Hecht (Interposing): Mr. Examiner, may I renew the motion on other grounds? From your statement now I gather there was certain admin-

(Testimony of Albert Zulaica.)

istration made by the Board, the National Labor Relations Board which is a direct test upon this contract to which this Respondent is bound. In other words, because of some knowledge the respondent here is asked to violate legal rights and not to perform obligations of their contract.

I submit that if this is the case the CIO should be on trial here, or in some other tribunal, not this Respondent.

So I move to strike, because all of this proceeding is directly an attack on this contract.

Trial Examiner Ruckel: We discussed that yesterday. [184]

Mr. Hecht: Yes, but I want to lay down that legal ground for the purpose of the record.

Trial Examiner Ruckel: Motion denied. And so far as the motion on this witness' testimony is concerned, that is denied also.

I think counsel should bear in mind with future witnesses (and let's save time as much as possible) that the testimony of this type, it seems to me, is important only if it makes a connection with the respondent's knowledge, unless it is pretty clearly 8(1) of a more garden variety.

Mr. Hecht: May I say also, Mr. Examiner, as far as I know, that the parties are always required to exercise their legal rights regardless of their——

Mr. Edises: Mr. Examiner, I would like to ask for a point of clarification.

Do I understand the Examiner's position as to the law to mean that if an employee engages in union

(Testimony of Albert Zulaica.)

activity on behalf of a rival organization that that clothes him with an immunity from any discipline by the contracting organization for any cause whatever? For example, suppose the fact should be that this man did engage in pro-A. F. of L. activity, and that the most salient and significant form of that activity was engaging in an illegal wartime strike in violation of the pledge of the ILWU, do I understand the Examiner's position to be that union activity of that kind [185] would put the man beyond the possibility of disciplinary action by the contracting union?

Trial Examiner Ruckel: I said nothing of the kind. I say from what you say the reasons for the discharge may have been that he engaged in an activity which the contracting union has specifically decided not to tolerate during the time of the war, that is not activity on behalf of some other labor organization. My remarks to the privilege of the employer, as the privilege of a citizen outside the union, is to engage in politics, if you will, so long as he maintains his membership in the contracting union. I said nothing about any intra-union activity which was not support of some other labor organization.

Mr. Edises: Now, my question was assuming that this activity of engaging in this strike was a form of activity in behalf of the formation of another labor organization. The facts in this case will show that that is true, that it was all part and parcel of this anti-CIO campaign, but the facts will

(Testimony of Albert Zulaica.)

also show that the aspect of it which the CIO regarded as culpable was not their interest in another organization but their engaging in this illegal wartime strike. And the question I am asking is whether your position as stated would indicate that that kind of activity was clothed with the protection of the Act?

Trial Examiner Ruckel: There is nothing in what I [186] said which would preclude evidence on that point. Then the question becomes more difficult, probably, but it amounts to the same thing because you are saying that the reason was not for their suspension, activity in behalf of some other organization, which led to their suspension, but the calling of a strike which the union had guaranteed would not be permitted. It is a question of fact, which was the motive on the part of the CIO, or which was the motive on the part of the CIO which came to the attention of the respondent.

Mr. Hecht: May I ask the Examiner also a point here for clarification? The Board's position, then, as a matter of law, is that if the Employer knows that the contracting union has a bad motive, let us put it that way, it may not perform the contract——

Trial Examiner Ruckel (Interposing): That has been the effect of our cases. I cited one yesterday where the bad motive was something else, where the purported motive was his failure to maintain dues. That knowledge was right on the table in front of the Employer. He knew by simply adding two and two together that the Union's claim was

(Testimony of Albert Zulaica.)

false, and that, therefore, the other reason must have been the one that activated it. But I said the Board has never held there was any obligation to the Company to go behind the scenes to find out or to investigate. Where he has it thrown up in his face, so that he knows that the Union is disciplining [187] a man for something else, then——

Mr. Hecht (Interposing): Going further, then, Mr. Examiner, the Board's position is that a contract then becomes invalid.

Trial Examiner Ruckel: That is not my position at all. It has never been the Board's position that I know of.

Mr. Hecht: If that is not the Board's position then how can the Employer refuse to honor the contract?

Trial Examiner Ruckel: Well, let's not discuss this any further. I think I have indicated that I think this testimony is material, which was moved to strike on the point of company knowledge, although I was not impressed by it from the standpoint of hostility toward either of the labor organizations.

Are there any further questions of this witness?

Mr. Hecht: Yes, sir, Mr. Examiner.

Cross-Examination

By Mr. Hecht:

Q. Mr. Zulaica, were you at the Green Room,

(Testimony of Albert Zulaica.)

158 Grand Avenue, Oakland, California, on December 17, 1945, at or about 8:30 P.M.?

A. Yes, I was.

Q. What is the Green Room?

Mr. Royster: I would like to ask counsel what line of examination this is.

Mr. Hecht: It is preliminary like some of your questions, [188] Mr. Royster.

Mr. Tobriner: I would also like to object. It was not covered in direct examination and, therefore, is not subject to cross.

Mr. Hecht: It is impeachment.

Trial Examiner Ruckel: You may answer.

Q. (By Mr. Hecht): What is the Green Room at that address, Mr. Zulaica?

A. Well, I can't explain; I really don't know what the Green Room is. I know it is a room, and that is all I can tell you about it.

Q. What were you doing in there?

A. What was the question?

Q. What were you doing there?

A. We went up there for a trial.

Q. You were being tried by the ILWU?

A. That is right.

Q. And during the proceedings of your trial you pleaded guilty, did you not?

A. We were practically forced to.

Q. Answer the question and you can explain later.

A. Well, that is the answer.

(Testimony of Albert Zulaica.)

Q. "Yes," is it? A. "Yes," of course.

Q. And now you are on probation—— [189]

Mr. Tobriner: Just a minute! He has a right to explain that, counsel.

Go ahead.

Mr. Hecht: We are not bound by the direct or cross. We weren't there, Mr. Examiner.

Trial Examiner Ruckel: That is correct. I still think he may qualify his answer if there is a qualification to be made.

Did you want to say something further?

The Witness: As to the Green Room?

Trial Examiner Ruckel: No, not the Green Room. You indicated although you plead guilty you didn't mean to, or want to.

The Witness: That is right.

Trial Examiner Ruckel: Finish your sentence.

The Witness: Because it was a very unfair thing, it was a very unfair trial.

Trial Examiner Ruckel: All right. We didn't want to know why it was unfair. That was your qualification of your answer.

The Witness: That is right.

Trial Examiner Ruckel: Continue.

Q. (By Mr. Hecht): And you pleaded guilty to violating the anti-strike pledge of the ILWU, did you not, Mr. Zulaica? A. Yes, I did. [190]

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Edises: I want to ask him a couple of questions.

(Testimony of Albert Zulaica.)

Q. (By Mr. Edises): Mr. Zulaica, you testified that you saw no CIO representatives in the plant in June or July. I would like to ask you: the employees of Colgate-Palmolive-Peet were members of the CIO at that time, were they not?

A. That is right.

Q. And you had certain officers, did you not, who conducted the grievances and handled the other activities on behalf of the employees, did you not?

A. Yes, sir.

Q. And who were those persons?

A. You mean the Stewards at the time?

Q. You had Shop Stewards, did you not?

A. Stewards, that is right.

Q. And they were the CIO representatives in the plant, were they not? A. Yes.

Q. And during the month of August, at that time the Stewards had been suspended, had they not? A. That is right.

Q. And there were other persons appointed in their place, were there not? A. Yes. [191]

Q. And the affairs at that time—Union affairs—were largely conducted by officials of the ILWU during that period, were they not?

A. Yes, sir.

Q. Did you during the month of August engage in activities on behalf of the A. F. of L. among your fellow employees?

A. Well, I don't know whether you would call it that. See, like I stated before, I didn't ask anybody. They came to me.

(Testimony of Albert Zulaica.)

Q. Uh-huh. A. And that is my opinion.

Q. That the employees came to you?

A. Yes.

Q. On the job? A. That is right.

Q. And did quite a number——

A. (Interposing): It so happens that my job gives me—well, I can say the freedom of walking around the department, see.

Q. Yes.

A. And whenever I pass anybody they would call me and ask me my opinion.

Q. And was there anything secret about that, or did you do it frankly and openly?

A. I did it openly, yes.

Q. You did it openly throughout the period that we are [192] speaking of, is that right?

A. That is right.

Q. And did you, in your testimony, intend to convey the inference that Mr. Stanberry was threatening you in some way?

A. Well, I don't know just how to take that.

Q. I mean, did you gather, was his attitude such as to lead you to believe that he was threatening you?

Mr. Royster: I will object to that. The Witness has testified as to what Mr. Stanberry said, and I believe if there is any threat, why, it must be implied from those words.

Mr. Edises: I submit that is a strange doctrine, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

(Testimony of Albert Zulaica.)

The Witness: Well, I don't know how to answer that because he didn't—it sounded like he was threatening, but at the same time the way he said it, why, it could have been put that way, you know, saying that he might have been threatening because he said, "Well, you can keep it quiet," or "keep it in your heart; take the button off."

Q. (By Mr. Edises): Well, was it your understanding, Mr. Zulaica, that Mr. Stanberry himself was—well, I will withdraw that.

Did you understand that Mr. Stanberry was referring to [193] what the Company felt it had to do under the contract?

Mr. Tobriner: Objection on the ground that the understanding of this witness on the subtle question which is asked would be immaterial.

Mr. Edises: Well, Mr. Examiner——

Trial Examiner Ruckel (Interposing): Objection sustained.

Mr. Edises: I would like to point out that here we have statements which, in the very nature of things, have got to be interpreted.

Trial Examiner Ruckel: Well, I think it is up to the Board to interpret it, though. The Board will bear in mind that might have been an explanation of the statement.

Q. (By Mr. Edises): Was the contract with the Union, the closed shop contract, Mr. Zulaica, was that mentioned to you, was that set forth as the

(Testimony of Albert Zulaica.)

reason for the Company's action when you were told that you had to be released?

Mr. Tobriner: Objection on the ground the question is compound, first asking whether it was a closed shop contract, and secondly, the various other questions interrelated so the witness couldn't answer it. I ask counsel to please reframe it.

Trial Examiner Ruckel: Reframe it.

Mr. Edises: Well, I will reframe it.

Q. (By Mr. Edises): Referring to the conversation in Mr. [194] Railey's office on September 1, 1945, do you recall that you testified about that?

A. Yes.

Q. Was anything said about the Union contract at that time? A. I don't recall.

Q. You don't recall? A. No.

Q. Didn't anybody ask why they were being released or suspended? A. Yes.

Q. Who asked?

A. Oh, I couldn't mention the names?

Q. Did you hear any answers?

A. I don't remember who was the one that answered.

Q. Was it one of the Company's officers?

A. Yes.

Q. And what was the answer?

A. Now, let's see. Repeat that question again. Then maybe I can answer it.

Trial Examiner Ruckel: What did he say?

The Witness: I believe it was Mr. Railey, the one that answered that.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What did he say?

The Witness: He said that he didn't know. He says, [195] "All you have to do is just look at this letter," and he showed it to us. He says, "All it says there that you are not in good standing."

Q. (By Mr. Edises): He showed you the letter?

A. That is right.

Trial Examiner Ruckel: Referring to Board's Exhibit 10.

Mr. Edises: Yes.

Q. (By Mr. Edises): Did you participate in the stoppage of work that occurred on August 1, 2, and 3, 1945?

A. Well, I didn't work those two and a half days, if that is what you mean?

Q. You did not? A. I did not.

Q. You didn't work for two and a half days?

A. That is right.

Q. You stayed away from work for two and a half days? A. That is right.

Q. You were familiar, were you not, with the ILWU's no-strike pledge? A. Yes, sir.

Mr. Edises: That is all.

Mr. Hecht: Mr. Examiner, at this point I would like to move to dismiss any charges against the Respondent brought on behalf of Mr. Albert Zulaica.

Mr. Tobriner: I have a few questions, I think, that [196] should——

Trial Examiner Ruckel (interposing): Let's finish the testimony.

(Testimony of Albert Zulaica.)

Do you have some further questions?

Mr. Tobriner: I have one or two questions.

Redirect Examination

By Mr. Tobriner:

Q. Mr. Zulaica, you mentioned that you were at a trial on December 17th?

A. That is right.

Q. Before that time had you any conversations with CIO officials about that?

Mr. Hecht: I object to that as being incompetent, irrelevant, and immaterial. The fact that he pleaded guilty—we were not there. Any such testimony is not binding upon us.

Mr. Tobriner: Well, Mr. Hecht himself brought up this situation.

Mr. Hecht: I just asked him for the facts.

Mr. Tobriner: And asked for the facts, and I think we have a right to go into them to show the nature of the plea, if any, that was made, and why it was made, so long as the matter is in the record.

Trial Examiner Ruckel: We are not interested in why the plea was made. All we are interested in—unless you can show that the Respondent knew why the plea was made. [197]

Mr. Tobriner: What was the purpose of Mr. Hecht's examination except, as I understand, to impeach the witness? I now want to show that the impeachment that he attempted failed.

Trial Examiner Ruckel: Well, I didn't understand that it was impeachment of the witness.

(Testimony of Albert Zulaica.)

Mr. Tobriner: That is what he stated at the time, Mr. Examiner.

Mr. Edises: Well, Mr. Examiner, it is quite clear that the purpose of the testimony, the only relevant purpose, can be to establish that the Company based its action in finalizing the status of this employee on the Union's decision following the trial of this employee.

Trial Examiner Ruckel: That is right.

Mr. Edises: Now, I don't know what Mr. Tobriner has in mind, but it is quite obvious that nothing in the question that he has asked could possibly be brought home to the company, or be attributed to the company.

Trial Examiner Ruckel: Well, I don't think the question is relevant unless you intend to show it was brought home to the company.

Mr. Tobriner: Well, Mr. Examiner, if the purpose of the testimony regarding the December 17 meeting was to somehow exonerate the Company for its actions, then I ask it be stricken. At the time the question was asked, if you recall, [198] I objected, and at that time Mr. Hecht said it was to impeach the witness, it was by way of impeachment.

Mr. Hecht: And it is by way of impeachment, Mr. Examiner. After all, the complainant is here charging the Company with unfair labor practices, and before doing so he has stultified himself at a tribunal of his own——

Mr. Tobriner (interposing): Then I have a right——

Vol. II

TRANSCRIPT OF RECORD

[redacted]

Supreme Court of the United States

OCTOBER TERM, 19[redacted]

No. 47

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

Transcript of Record
In Three Volumes
Volume II
Pages 337 to 666

Upon Petition for Review, and Petition to Enforce Order of the National Labor Relations Board.

Rotary Colorprint, 870 Brannan Street, San Francisco 5-22-47—50

(Testimony of Albert Zulaica.)

Mr. Hecht (interposing): I am entitled to impeach him and he has been impeached.

Mr. Tobriner: Then I have a right by your own statement to show why the plea was made, to show that your impeachment is improper and out of order, and that is exactly the purpose of my question.

Mr. Edises: Mr. Examiner, I want to suggest that if this procedure is allowed to go on it will obviously take this trial into a lot of by-paths, and I submit that the Trial Examiner should rule in this instance that the testimony is relevant for the purpose that I indicated a moment ago, even though it may not technically be impeachment.

Mr. Tobriner: Mr. Examiner, I can ask one question——

Trial Examiner Ruckel (interposing): I thought I permitted the questions a while ago. Now, the objection I am upholding now is the objection which apparently is designed to show—to go behind the proceedings to show that they were fraudulent, or that his plea of guilty was [199] brought about by coercion on the grounds that the Respondent almost certainly could not know that was the case, if it was, and we are concerned here with the Respondent's motive in discharging a man.

Mr. Tobriner: Yes, but the testimony originally went into the record not on that ground but because Mr. Hecht——

Trial Examiner Ruckel (interposing): Well, I am paying no attention to it on the grounds of

(Testimony of Albert Zulaica.)

impeaching witnesses, whether it was offered for that purpose or not, and I sustain this objection.

Mr. Tobriner: I have no further questions.

Mr. Royster: That is all.

Mr. Hecht: Will the Examiner entertain at this time a motion to dismiss all charges against the Respondent brought on behalf of the complainant, Albert Zulaica?

Trial Examiner Ruckel: No, not at this time. I will entertain that motion at a later time, with respect to all of this.

Mr. Hecht: Very well, Mr. Examiner.

Trial Examiner Ruckel: That is all.

Mr. Royster: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Call the next witness.

Mr. Royster: Mr. Lonnberg.

HAROLD R. LONNBERG

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address for the record, please.

(Testimony of Harold R. Lonnberg.)

A. Harold R. Lonnberg, 1245 60th Avenue, Oakland.

Q. What is your occupation, Mr. Lonnberg?

A. At the present time I am working as a roll operator in a steel plant, Steel Tank and Pipe in Berkeley.

Q. And you were employed by the Respondent for what period?

A. I was first employed on June 29 in 1938.

Q. And when did you leave that employment?

A. On July 31 I was suspended.

Q. Of what year? A. Of 1945.

Q. And you were a member of the ILWU, were you not? A. I was.

Q. For what period?

A. From the time that the Local Industrial Union 96, CIO, was transferred into the Warehouse Union.

Q. Up until when? [201]

A. Up until my suspension.

Q. And that occurred when?

A. On July 31, if I recall right.

Q. 1945? A. 1945.

Q. Now, you attended this meeting of Respondent's employees to which reference has been made on July 26, did you not, Mr. Lonnberg?

A. I did.

Q. And it was at that meeting that—strike that. Was there a statement made at that meeting as to the purpose of the Employees Welfare Association? A. Yes.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: I thought we had agreed off the record yesterday——

Mr. Royster (interposing): We had talked about it off the record, Mr. Examiner. I think that I can agree that after this witness I will ask no other witness any questions with respect to that point, but I am not completely satisfied with the state of the record on it yet.

Trial Examiner Ruckel: All right, continue.

Q. (By Mr. Royster): Will you state, or can you state, what the purpose of the Welfare Association was?

A. The title of it may seem misleading, but it was to take care of the negotiations and relations, labor relations, [202] of the employees with the Employer.

Q. Now, Mr. Lonnberg, at the meeting of the Welfare Association on July 30 you, among three others, were selected to meet with the Company, were you not? A. That is right.

Q. Now, on July 30 did you see Board's Exhibit 4 (handing document)?

A. (Examining document) It was brought to my attention.

Q. Where did you see it?

A. It was shown to me by one of the other fellows at the plant.

Q. All right. On July 31, you, with three others who have been named, went to Mr. Railey's office?

A. That is right.

Q. Was anything said in Mr. Railey's office and

(Testimony of Harold R. Lonnberg.)

in Mr. Railey's presence with respect to your suspension?

A. Yes. Mr. Heide informed the four of us that there were letters made out stating the reasons that we were to be suspended, that were in the mail to us, and that one of them, he did not know their name, so he had to fill in the name on that one. The letter was already made out and it would be put in the mail. That was Brother Olsen.

Q. Now, when was this statement made to you with reference to the so-called strike, which, I understand, occurred at noon of July 31? [203]

A. The meeting occurred and was concluded before any such action was taken.

Mr. Hecht: What meeting was that, may I ask, Mr. Royster?

Mr. Royster: This is the meeting in Mr. Railey's office. It is part of our stipulation.

Mr. Hecht: Yes.

Mr. Royster: Where the four committeemen came in.

Mr. Hecht: Yes, thank you.

Q. (By Mr. Royster): Have you worked, then, for the Company since the 31st day of July?

A. The 31st day of July? No.

Q. And have you made an attempt to be reinstated? A. Yes.

Q. And when was that?

A. On or about the 17th of August.

(Testimony of Harold R. Lonnberg.)

Q. And you were refused reinstatement at that time, were you not? A. That is right.

Q. Were you in Respondent's plant on August 25, 1945?

A. On or about that date, yes.

Q. And who accompanied you, if anyone?

A. Mr. Harvey E. Howard and Mr. Dave Luchsinger.

Q. And who was Mr. Howard?

A. At that time he was the representative of the A. F. of L. [204] Local Chemical Workers 233.

Q. You were a member of the Chemical Workers, were you? A. I was.

Q. What happened during the time you were in the plant?

A. We went through various departments in the plant and said, "Hello" to the people. We run across Mr. Gleichman in the Seafoam Department, who was talking to one of the employees.

Q. Is that Hack Gleichman seated at the counsel table?

A. Gleichman, whatever his name is, yes.

Q. Did you have any conversation with any company representatives on that occasion?

A. We went through some more departments, and when we were in the Toilet Article Warehouse talking to some of the people there, Mr. Carter, the Supervisor, came there.

Q. And what did Mr. Carter say?

A. He said, "I will have to ask you to leave this plant." And I asked Mr. Carter, "Why?" He

(Testimony of Harold R. Lonnberg.)

said, "You are not any longer an employee here, and—" he says, "you have no business here."

I asked Mr. Carter why Mr. Gleichman and a Mr. Carlisle Harrison were permitted in the plant and we were not. He said, "They are representatives of the CIO Longshoremen's and Warehousemen's Union." I told him that to my knowledge Mr. Carlisle Harrison was not an elected representative, to [205] my knowledge, that he was only a former employee the same as myself, and that I thought that Mr. Harrison and Mr. Gleichman should be asked to leave if we were.

Q. Did you leave the plant?

A. We did.

Q. What was your purpose in visiting the plant?

Mr. Hecht: At this point may I make a motion to strike all the testimony with reference to August 25 and the visit of this gentleman to the plant?

Trial Examiner Ruckel: The motion is denied.

Q. (By Mr. Royster): What was your purpose in visiting the plant, Mr. Lonnberg?

A. Mr. Luchsinger and myself and Mr. Howard were in the Local's office at 1440 Broadway, when we were called up from the plant and informed that these two aforementioned gentlemen were there. We tried to contact the management of the plant, Mr. Railey, Mr. Altman, or Mr. Wood. We could not contact any of them, so we decided to go down and see what was going on. So consequently we went down to the plant and went all

(Testimony of Harold R. Lonnberg.)

through the plant before we were escorted out of the plant.

Q. Well, you stated you were talking to employees in the plant. What were you talking to them about?

A. Well, we didn't stop to talk to any of them at that——

Mr Hecht (interposing): Mr. Royster, just a moment, [266] please.

Mr. Hecht: I think what they were talking to the employees about is incompetent, irrelevant, and immaterial.

Mr. Royster: He can testify what he was saying to the employees.

Mr. Hecht: I don't see what bearing it has on the case as far as this Respondent is concerned.

Trial Examiner Ruckel: You may answer.

A. We spoke to the various people that approached us as we went through. We said, "Hello" to them and told them that everything was looking fine as far as we knew, but we did not think it was right that the CIO should be able to campaign on the job and the A. F. of L. not.

Mr. Royster: That is all.

The Witness: And—pardon me.

Mr. Royster: Excuse me. Finish your answer.

The Witness: We did not only talk to employees. There were some of the foreman asked us questions too, and we gave them the same answers.

Q. (By Mr. Royster): Can you recall the names of any of the foremen?

(Testimony of Harold R. Lonnberg.)

A. I would rather not as these men are still working in Colgate-Palmolive-Peet's.

Mr. Royster: That is all.

Mr. Hecht: Mr. Royster, may I call your attention to [207] the complaint.

Mr. Rowell: Well—

Mr. Hecht (interposing): This is preliminary to a motion.

Mr. Rowell: I see.

Mr. Hecht: Paragraph 5, Subdivision 3; I assume that the testimony of Mr. Lonnberg is directed to this subdivision?

Trial Examiner Ruckel: At least it fits in there.

Mr. Royster: Yes.

Mr. Hecht: Yes. Now, Mr. Examiner, it says, "Refusing union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours."

My reference is to the first part of the paragraph. There is no evidence here adduced from Mr. Lonnberg that they were refused access. As I understand the connotation of such language is that they asked for permission to come in and it is refused. It appears here these gentlemen did not ask for permission to enter but were escorted out for reasons which Mr. Carter may have had.

I am going to move to strike, it being at variance with the pleading, and not proving any allegation of the complaint.

Trial Examiner Ruckel: Motion denied.

(Testimony of Harold R. Lonnberg.)

Mr. Rowell: May I ask one or two questions?

Mr. Hecht: I am going to ask some questions.

Mr. Rowell: I want to ask further questions on direct.

Trial Examiner Ruckel: You want to supplement these questions?

Mr. Rowell: I want to supplement the direct.

Q. (By Mr. Rowell): Mr. Lonnberg, at this meeting of July 30 were there any foremen or supervisors of the Company there?

A. Yes, sir.

Q. Who were there that were in that category?

A. Brother Chuck Grube.

Q. Charles Grube? A. Charles Grube.

Mr. Hecht: I move to strike that, Mr. Examiner, as incompetent, irrelevant, and immaterial, as not bearing on the issues of this case. It has been testified Grube was an ILWU member. I don't see what the point is.

Mr. Rowell: Mr. Wood testified he had supervisory capacity, Mr. Examiner.

Mr. Hecht: Well, he was a member of the Union too.

Trial Examiner Ruckel: What is the point if he was a member of the Union?

Mr. Rowell: It just adds to the evidence and the fact that the Company had knowledge of the meeting.

Mr. Hecht: That is not denied. [209]

Mr. Rowell: Well——

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel (interposing): Objection sustained.

Q. (By Mr. Rowell): Did you receive a letter from the Union after this meeting in Mr. Railey's office about which you testified? A. Yes.

Q. Have you got that letter?

A. No; I am sorry. I destroyed it.

Q. Can you remember what it said?

A. If was similar to the letters that were received by the other three men that were in the office at the time I was.

Q. I show you Board's Exhibit 9, Mr. Lonnberg, and ask whether the letter you received was similar to that?

Mr Edises: Is that 9 for identification?

Mr Royster: No; it is in evidence.

Q. (By Mr. Rowell) Was there any difference in your letter?

A. (Examining document) The only difference that I see was my name and address.

Q. Did you ever receive any other letter from the Union? A. I did.

Q. When did you receive that?

A. It was approximately two or three weeks after this one.

Q. And have you got that letter? [210]

A. No, I am sorry.

Q. Can you remember what it said?

A. There is one sentence that stands out in that

(Testimony of Harold R. Lonnberg.)

letter distintely in my mind. It was the last sentence of the first paragraph.

Q. And what did that say?

A. It said that——

Mr. Edises (interposing): Now, just a moment. I want to enter an objection.

There has been no showing of the unavailability of the best evidence, and there is no showing of any accurate recollection of the contents so as to enable him to testify in a secondary way.

Mr. Rowell: He has testified it stood right out in his mind.

Trial Examiner Ruckel: Do you have a copy of that letter?

Mr. Edises: One particular paragraph stands out in his mind. We are not required to be bound by that testimony. We have a right to demand the best evidence, at least in the absence of a showing that it is unavailable.

Trial Examiner Ruckel: Do you have it home or elsewhere?

The Witness: No, I am sorry. I was burning some trash in my yard when I received that letter and I dropped [211] it in the fire.

Mr. Hecht: Mr. Edises, may I suggest that the intervener produce its copy of the letter, if any.

Mr. Edises: Well, I presume——

Trial Examiner Ruckel (interposing): It seems to me there must be copies of the letter or of similar letters.

(Testimony of Harold R. Lonnberg.)

Mr. Edises: If the original is unavailable I daresay the copy would be the best evidence.

Trial Examiner Ruckel: Objection sustained. Let's have your copy if you have it.

Q. (By Mr. Rowell): What was the date of that?

A. It was two or three weeks after this letter was received.

Mr. Royster: Around the 20th of August.

Mr. Rowell: I think the witness should be permitted to testify subject to a motion to strike.

Mr. Edises: Let's wait and see if we have a copy.

Mr. Rowell: If a copy isn't produced——

Trial Examiner Ruckel (interposing): Any further questions?

Mr. Rowell: Well, they are looking for a copy.

Mr. Hecht: Mr. Examiner, when the letter or the copy of the letter is produced may it be understood that any testimony in connection therewith is not binding on the Respondent unless his knowledge is shown? [212]

Trial Examiner Ruckel: Well, it pretty well stands to reason, it seems to me——

Mr. Rowell: (Interposing) I don't see that at all, Mr. Examiner. This case is directed against the Company in all its phases. The intervening union here is only properly in the case in so far as it offers evidence and testimony on a defense by the company. They are making defenses which have been thoroughly stated, and the purpose of

(Testimony of Harold R. Lonnberg.)

which has been explained, and the defenses are different than the ones that Mr. Hecht is making.

Trial Examiner Ruckel: Are you going to bind the company by a letter from the union to this man of which the company didn't receive a copy? Even if it did receive a copy?

Mr. Rowell: The union's position is that these men were suspended because of strike action, at least some of them. It certainly doesn't apply to Mr. Lonnberg, but that position can only be supported as a company defense. And if the position is being maintained by the Intervener on behalf of the company we are entitled to meet it.

Mr. Hecht: You asked the question, Mr. Rowell. Mr. Edises didn't.

May we have a recess while Mr. Edises looks for that letter?

Trial Examiner Ruckel: We just had one. I hope in a [213] second he will find it.

Mr. Tobriner: Off the record.

Trial Examiner Ruckel: Off the record.

(Remarks off the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: We will object to any questions as to any communications which may have been sent in by the union, one, on the ground that the communication itself would be the best evidence; second, on the ground that it does not prove or tend to prove any of the issues in the case; it is incompetent, irrelevant and immaterial.

(Testimony of Harold R. Lonnberg.)

Mr. Hecht: We join in the objection, Mr. Examiner.

Trial Examiner Ruckel: Well, since you are unable to find the copy of that letter and since he has testified that he destroyed the original, I think he may testify what it says, to the best of his recollection.

Mr. Edises: Well, may this be subject to a motion to strike in the event it is not connected with the company?

Trial Examiner Ruckel: Certainly. I don't know whether it is relevant or not.

Mr. Rowell: Will you answer the question? Can you remember?

A. The sentence that stood out in my mind was the last sentence of the first paragraph.

Q. (By Mr. Rowell): What did that say? [214]

A. It stated that Sherman, Lonnberg and Thompson were considered no longer connected with the Warehouse Union regardless of trial, and it went further to state, further down in the letter, that it was a call for me to appear at a trial in the Warehouse Union's hall.

Mr. Hecht: Now, on behalf of the company, of the respondent, I move to strike it, Mr. Examiner.

Mr. Edises: We join in that motion, your Honor.

Mr. Rowell: I can only repeat that the CIO union has been allowed to go into these matters on some sort of an expectation which, I suppose, is forwarded to them by the company, that it will be tied up later as to the issue of knowledge of the

(Testimony of Harold R. Lonnberg.)

company. I don't know the Board's case. Maybe this will get tied up for all I know. If they are going to produce a lot of testimony as to what the company knew——

Trial Examiner Ruckel: (Interposing) Maybe it will get tied up, but you don't have any present expectation?

Mr. Rowell: Well, I can't have any control over the company's witnesses as the CIO apparently has. I don't know what is going to come out as to the knowledge of the company. Apparently it is more extensive than I thought it was.

Mr. Edises: Mr. Examiner, I want to make a motion to strike. There is a completely uncalled for statement in [215] Mr. Rowell's remarks, that apparently the CIO has control over the company's witnesses.

Now, I submit, Mr. Examiner, that it is perfectly possible to try this case without going into personalities of that kind.

Trial Examiner Ruckel: Well, I should think so. The motion to strike is——

Mr. Tobriner: (Interposing) Mr. Examiner, may I be heard for just a moment? I want to point out if the question is brought up at all as to the suspensions or expulsions and the trials, and if the Company and the CIO are relying upon those actions in a manner of defense here, that it certainly would be unilateral if they were permitted to introduce proof and statements as to the rulings in those trials and we were prevented from so doing. In

(Testimony of Harold R. Lonnberg.)

other words, if the matter is to be probed by one party, and if one party is to be permitted to rely on it on the ground that he has some knowledge that subsequently he obtained as to the reasons for the suspensions, certainly we should be permitted to place into the records the full story of the suspensions so that the Board could have all the facts and make its own determination.

Trial Examiner Ruckel: Well, I don't subscribe to your general statement. I am going to let this particular bit of testimony stand for what it is worth. [216]

Mr. Edises: Will my motion be granted as to Mr. Rowell's uncalled for remarks?

Mr. Rowell: He already granted it, Mr. Edises.

Trial Examiner Ruckel: I said yesterday we should keep them out of the record.

Mr. Rowell: I withdraw the remark.

Trial Examiner Ruckel: Let's continue with this witness. At the rate we are making this morning we will be here endlessly.

Mr. Rowell: I have no further questions.

Cross Examination

By Mr. Hecht:

Q. Mr. Lonnberg, on August 17, 1945, when you applied for reinstatement at the respondent's plant you were not a member in good standing of the ILWU?

A. To my knowledge, I hadn't been tried or found guilty or anything of the kind. I was still, to my knowledge, in good standing with the ILWU

(Testimony of Harold R. Lonnberg.)

in the sense that my dues were within—reasonably paid up.

Mr. Hecht: I move to strike the answer on the ground that it is not responsive, Mr. Examiner.

Mr. Tobriner: Mr. Examiner, it answers the question fully, and the witness should be permitted to tell the whole story, as he has.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Hecht): Perhaps to aid you, Mr. Lonnberg, I [217] will reword my question. You knew at that time that the respondent had been informed by the authorized officers of the ILWU that you were not in good standing with the ILWU?

A. Yes, I was in the meeting there with the other three men when we were told about it.

Q. Mr. Lonnberg, on August 17, 1945, you knew that there existed a collective bargaining agreement between the Respondent and the ILWU dated July 9, 1945?

Mr. Rowell: '41.

Mr. Royster: '41.

Mr. Hecht: '41. Pardon me.

A. Yes, sir.

Q. (By Mr. Hecht): Are you familiar with the terms of that contract?

A. To a certain extent, yes.

Mr. Hecht: May I have Board's Exhibit 7?

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): Will you read Section 3 on page 1 of the contract to yourself, Mr. Lonnberg?

(Testimony of Harold R. Lonnberg.)

Mr. Tobriner: In order that the record be complete, we object to this whole line of questioning on the ground it is immaterial.

Trial Examiner Ruckel: He may ask him.

Q. (By Mr. Hecht): Does your recollection of what is contained in that contract gibe with what is expressed in [218] Section 3?

A. Approximately, yes.

Q. On August 25, 1945, you stated that you entered respondent's plant in the afternoon?

A. On August which?

Q. 25, 1945? A. On or about.

Q. That was a Saturday, was it not?

A. Yes.

Q. Had you at any time prior to August 25 asked permission of any officer or agent of the respondent to enter the plant for the purpose of doing, let us say, electioneering?

A. I hadn't myself, but our union representative had.

Q. Will you name that union representative?

A. Mr. Harvey E. Howard.

Q. Of whom had he made that request?

A. I do not recall.

Q. Is Mr. Harvey Howard, to your knowledge, available to testify in this case?

A. I do not know.

Q. You know Mr. Howard is not any longer in the East Bay, do you not?

A. I don't know whether he is or is not.

(Testimony of Harold R. Lonnberg.)

Q. For your information, Mr. Howard is now in the East and not available to testify. Did you know that before you made [219] this statement?

A. I did not.

Mr. Tobriner: Objected to on the ground this is utterly immaterial, where Mr. Howard may happen to be.

Trial Examiner Ruckel: Just a moment. Objection sustained.

Mr. Hecht: Very well.

Q. (By Mr. Hecht): Did Mr. Howard tell you that he had made such a request? A. Yes.

Q. When?

A. It was prior to this trip to the plant.

Q. You don't know of your own knowledge that Mr. Howard had made such a request?

A. I do not.

Q. You do not. You are merely relying, then, on what Mr. Howard told you?

A. That is right.

Q. Correct. Did you, after August 25, make any approach to the company to be permitted to enter the plant for the purpose of doing electioneering? A. No, I did not.

Q. As I understand it, Mr. Lonnberg—you will have to help me—I don't know the physical set-up of the plant—there is a cyclone fence around the buildings? [220] A. Yes.

Q. And a gate also, a cyclone fence that moves back and forth? A. Swings.

Q. Or opens and swings. And at this gate there

(Testimony of Harold R. Lonnberg.)

is a sentry box, sort of, where there is a watchman?

A. There was a watchman at the gate, yes.

Q. This watchman makes you register as you come in, did he not? A. He didn't this time.

Q. He did not ask you to register?

A. He did not.

Q. You knew it was the practice to register?

A. I had never been required to register going in there before.

Q. Before you were an employee?

A. That is right.

Q. But you knew that persons who were not employees were required to register?

A. I had not noticed that practice, no.

Q. You know there is a sign on the gate that so states? A. I had not observed it.

Q. You had not observed it in your four years of employment in the plant?

A. The gate was always open when I went through it. [221]

Q. And the sign was not there, to your knowledge?

A. It may have been. I don't know. I didn't observe it.

Mr. Tobriner: Objected to.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Lonnberg, will you look at the document I hand you and see if you can identify it?

A. (Examining document) Yes, this is similar to the letters the other three men received.

(Testimony of Harold R. Lonnberg.)

Q. Would you say that was a copy of the letter you received?

Mr. Rowell: Let's have the letter specified. Which letter are you talking about, Mr. Edises?

Mr. Edises: Mark that for identification, please.

Mr. Rowell: In other words, the witness testified he received two letters.

Mr. Edises: Would you mark that for identification, please?

(Thereupon the document above referred to was marked Intervener's Exhibit No. 4 for identification.)

Q. (By Mr. Edises): Intervener's No. 4 is a copy of a letter bearing date of July 31, 1945, addressed to Mr. Harold Lonberg, 1245 60th Avenue, Oakland, California.

I ask you if you can identify this as a copy of a letter which you received on or about that date?

A. (Examining document) It looks almost like it.

Q. Yes. [222] A. As near as I can tell.

Q. You later received a letter from the Union stating that you were going to be tried on October 3, isn't that correct? A. Approximately.

Q. Did you show up for the trial?

A. I did not.

Q. Did ~~you~~ take part in the meeting of employees of the company which took place on September 30? A. I did.

Q. Did you participate in that——

(Testimony of Harold R. Lonnberg.)

Mr. Royster (interposing): Do you mean July 30?

Mr. Edises: Sorry; July 30.

Q. (By Mr. Edises): Your answer is "Yes"?

A. Yes.

Mr. Edises: Do we have the minutes of that? I think it is Intervener's 2.

(The document was handed to Mr. Edises.)

Q. (By Mr. Edises): These have been identified as the minutes of that meeting, Mr. Lonnberg, and I would like to call your attention to the third paragraph.

Would you read that, please?

A. (Examining document.).

Q. That reads, does it not, "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. [223] officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Does that comport with your recollection of the resolution that was made and carried at that meeting? A. Yes.

Q. And then calling your attention to the fifth paragraph "Motion to Elect a two-member negotiating committee. Nominated and seconded were E. H. Thompson, Wm. Sherman, H. Lonnberg, and Lincoln Olsen. An amendment to the motion that the 4 members nominated to be elected, amendment seconded. Amendment carried and motion carried unanimously."

(Testimony of Harold R. Lonnberg.)

Does that likewise comport with your recollection? A. It does.

Q. And the H. Lonnberg referred to there is yourself, is it not? A. That is right.

Q. And pursuant to that authorization you went to the Company the next day, did you not, and demanded the reinstatement of the Stewards?

A. We did.

Q. And just what took place at that time?

A. We had to wait until Mr. Railey was in the plant. Then the four of us got together and presented ourselves to Mr. Railey in Mr. Railey's office. We asked for the reinstatement of the Stewards upon the job. It was talked pro and con, [224] and he told us that——

Q. (Interposing): Did you tell him who you were? A. We did.

Q. Did you tell him what your authority was?

A. We told him we represented the employees of the plant, and the purpose was to try and reinstate the Stewards on the job.

Q. Did you conceal from him the fact that you had authority to stay away from work if your demand was not granted?

Mr. Rowell: I object to the form of that question, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Did you mention that?

Mr. Tobriner: Objection on the ground I don't know what counsel means when he says——

Trial Examiner Ruckel: Objection sustained.

(Testimony of Harold R. Lonnberg.)

Q. (By Mr. Edises): Did you mention the fact that the membership had authorized staying away from work unless the demand was carried out?

A. I didn't mention it. Brother Sherman was our spokesman.

Q. Did he mention it?

A. I don't recall.

Q. Your demand was turned down, wasn't it?

A. He told us that he could not hire the men back because of the agreement with the ILWU.

Q. Then what happened next?

A. He then asked us, or he left the office and came back and told us that the officials of the Warehouse Union were over in Mr. Altman's office and asked us if we would meet with them. At first we refused to, but then we finally acceded to meeting with them. So they came into the office, and Mr. Railey made an extensive speech which amounted to that under the terms of the contract the company's hands were tied, and also the National Labor Relations Act would enter into the picture.

Q. What happened next?

A. So in the ensuing conversation the four men were authorized that there were letters in the mail stating to the Company that they were no longer in good standing with the ILWU, so we were to be suspended, and they asked Mr. Lincoln Olsen's name, because they did not have his name.

Q. Yes. What happened next?

(Testimony of Harold R. Lonnberg.)

A. The meeting broke up and the five Stewards left the plant and so did the Union officials.

Q. The five Stewards were present during this conversation?

A. They were, while the conversation was going on, yes.

Q. Yes. And then what took place after this conversation?

A. The Stewards and the Union officials were asked to leave the plant, and the four of us left the office, and Mr. Railey spoke, as has been testified, to us in front of Mr. [226] Smith's office.

Q. Well, then, what did you do after that?

A. I went back to my job.

Q. Yes. Oh, by the way, before you went back to your job, the four of you had been together? You left the office in a group, did you?

A. Yes.

Q. Did you say anything to each other?

A. No.

Q. You just walked out silently, huh?

A. That is right.

Q. What? A. That is right.

Q. What was the first thing you said to each other after you left the office?

A. Well, Mr. Railey started a conversation with us outside of Mr. Smith's office.

Q. With the four of you?

A. The four of us.

Q. And what was the substance of that conversation?

(Testimony of Harold R. Lonnberg.)

A. He said that he was sorry that things were the way they were, he would like to see us back there to work.

Q. Yes. And then what did you do next?

A. I went back to my job, and various people asked me what took place, and I told them. [227]

Q. And what did you do next?

A. I went to the meeting.

Q. What meeting?

A. At noon; at 12:15.

Q. What was done in regard to having the employees leave their jobs?

A. Well, the employees were fully informed of the previous action, as a matter of fact it was their action, and we informed them the results of the meeting, so they went to a meeting at 12:15.

Q. I want to be sure that I understand you. You say that they were fully informed of their previous action. You mean to say that it was generally known throughout the plant?

A. That is right.

Q. That a resolution had been passed in the shape of the resolution contained in these minutes?

A. That is right.

Q. And, if I understand you correctly, when you informed the employees that you had been successful in accomplishing your mission, they then understood that the resolution was to be carried out, is that correct? A. That is right.

Q. And how long after you notified the em-

(Testimony of Harold R. Lonnberg.)

ployees that you had not succeeded in getting the Stewards back did they walk out? [228]

A. As it has been testified, that meeting broke up at approximately 11 o'clock.

Q. So it was about one hour later, is that right?

A. Approximately, yes.

Q. Now, just what did you do personally about notifying the employees of the results of the conference?

A. As I went back to my department various people approached me and asked me the results, and I informed them.

Q. Did you make any kind of a circuit around the plant? A. I did not.

Q. Did any of the other members of the committee, to your knowledge?

A. Brother Thompson did.

Q. Just what did he do, if you know?

A. He ran around and informed various people within various departments the result of the meeting.

Q. And then you remained away from work to the same extent as the rest of the people, two and a half days, is that right?

A. That is quite obvious. I was suspended.

Q. I didn't ask you whether it was obvious or not. I just asked you whether you remained away from work from that time on?

A. I haven't worked for that company since.

Q. Did you speak in favor of the resolution

(Testimony of Harold R. Lonnberg.)

at the time [229] that it was adopted on July 30?

A. Which resolution?

Q. The resolution in regard to getting back the Shop Stewards? A. I believe I did.

Mr. Tobriner: Would you please refer to the resolution, Mr. Edises? It isn't quite clear just what you do mean.

Mr. Edises: "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Q. (By Mr. Edises): Did Mr. Sherman speak in favor of that resolution?

A. Mr. Sherman was the Chairman.

Q. Would you answer the question, please?

A. I don't recall.

Q. Did Mr. Thompson speak in favor of the resolution?

A. I don't recall that he spoke for or against it, I mean after the resolution was made, but I think he said something about it previous to that.

Q. Did Mr. Lincoln Olsen speak in favor of the resolution?

A. I don't believe Mr. Olsen spoke at that meeting.

Q. Now, were there any activities, or was there any program adopted for keeping the employees together during the time of the walkout, keeping them informed of what was going on, [230] and so on? A. Yes.

(Testimony of Harold R. Lonnberg.)

Q. Would you describe that program, please?

A. I believe that program was set up on July 31. There were various employees of the Company to receive telephone calls from the people within their department concerning what was taking place.

Q. And was there anything in the nature of a strategy committee?

A. I believe the four men, along with others, were to carry out the strategy.

Q. Well, what four men? When you speak of the "four men," you mean the four committeemen?

A. That is right.

Q. Well, what four men? Thompson, Sherman, Lonnberg, and Olsen, is that right?

A. That is right.

Q. Do you remember any other persons who participated in this strategy committee?

A. I would rather not name them, because some of them are still working at Colgate-Palmolive-Peet's.

Q. Leave those persons out.

A. The five Stewards were included.

Q. Were included. Now, Mr. Lonnberg, had you ever been an officer of Local 6, CIO? [231]

A. I served two years on the Investigating Committee, one year of which I served as Chairman.

Q. Yes. And were you an active union member of the CIO? A. I was.

Q. And I suppose you were familiar with the policies of the Union? A. I was.

Q. Were you aware that the ILWU had

(Testimony of Harold R. Lonnberg.)

pledged that it would not tolerate any strikes or stoppages of work during the duration of the recent war?

A. That was a directive handed down by the Executive Board of the International, as I understand it.

Q. Well, you knew that it was the official action of the Union, did you not?

A. Well, that was what I knew, it was a directive down from the Executive Board.

Q. Well, you are not contending that you did not know that that was the official union policy, are you?

A. Well, the Executive Board evidently was the policy board.

Q. Uh huh. Are you intimating that you were opposed to that policy?

Mr. Rowell: Well, now, that is immaterial.

Mr. Royster: I object.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Now, you stated on the 25th of August, while you were in the plant with Mr. Harvey Howard and Mr. Luchsinger, you spoke to a number of employees, and that not only did employees talk to you but also foremen spoke to you; is that right? A. That is correct.

Q. And you very courteously declined to name the foremen, but I trust that you have no similar objection to telling us what you discussed with these foremen?

(Testimony of Harold R. Lonnberg.)

A. They asked us how things were going, and we informed them, "So far they looked fairly good."

Q. They looked fairly good. That seemed to make them happy?

Mr. Tobriner: Objection.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: No further questions.

Mr. Hecht: I have a couple of more questions.

Mr. Royster: Well, I guess I am entitled to have a second crack now on the redirect, am I not?

Trial Examiner Ruckel: You may examine.

Redirect Examination

By Mr. Royster:

Q. At the meeting in Mr. Railey's office on July 31, Mr. Lonnberg, did you see a telegram at that meeting?

A. It came in during that meeting. [233]

Q. And to whom was it delivered?

A. To Mr. Railey.

Q. Did Mr. Railey open the telegram?

A. I believe he did.

Q. Did you see the message?

A. No, I don't believe I did.

Q. Did he make any comment on the message to you or to the others there?

A. He commented that he had now received the telegram from the Welfare Employees Association.

Q. Hid there been any prior conversation about such a telegram?

(Testimony of Harold R. Lonnberg.)

A. Brother Sherman had informed him of such telegram.

Q. Well, what had he told him about a telegram?

A. He told him that "If you haven't received a telegram yet, it will be forthcoming."

Q. And what telegram? Did he tell Mr. Railey what the telegram was about?

A. I believe he told Mr. Railey that it was notification of our severance with the Warehouse Union.

Mr. Hecht: Mr. Royster, may I suggest that if Mr. Sherman is available to testify that he probably could do a better job of it?

Mr. Royster: Mr. Sherman will be on. That is all I have. [234]

Recross-Examination

By Mr. Hecht:

Q. Mr. Lonnberg,——

Trial Examiner Ruckel (interposing): Are we through over on this side of the table?

Mr. Rowell: I am not sure. Just a moment. No questions.

Q. (By Mr. Hecht): You attended this dinner meeting on July 26? A. I did.

Q. Do you know whether any minutes were taken of that meeting?

A. I don't believe there were.

Q. I believe you also attended the meeting of July 30? A. I did.

(Testimony of Harold R. Lonnberg.)

Q. Were you at the door like Mr. Olsen was?

A. I was not.

Q. You were on the floor, I take it, or on the platform?

A. I was over on the lefthand side of the building going in, on the raised platform.

Q. Do you know whether any reference was made at that meeting to minutes of the meeting of July 26? A. There was not.

Q. Do you know whether the Chairman or the Recording Secretary of that meeting made any remarks—just answer the question "Yes" or "No"—with reference to questions of [235] racial discrimination?

A. Would you restate that question, please?

Q. Was anything stated from the platform on July 30 with reference to racial discrimination?

Mr. Rowell: That is objected to as utterly immaterial.

Mr. Royster: I will join the objection.

Trial Examiner Ruckel: Objection sustained.

Mr. Hecht: Mr. Examiner, may I have permission then to recall this witness after I put in my case? Certain matters have come within the Company's knowledge connected with the question I have asked, and if I may introduce that evidence by means of the Company's officers, but in that case I will have to recall——

Trial Examiner Ruckel (interposing): It may become relevant. Is this witness going to be around?

The Witness: I am working.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: You are working in the city?

The Witness: In Oakland, or in Berkeley, rather.

Mr. Edises: Perhaps counsel could make this witness his own witness just for the purpose of asking him——

Mr. Rowell: That doesn't make the question any more material.

Mr. Edises: It would be simply taking him out of turn, avoiding the necessity of recalling him.

Mr. Hecht: I would be glad to do that. [236]

Trial Examiner Ruckel: I think maybe it wouldn't be an issue in the case. You will have ample time to get in touch with him.

Mr. Rowell: He will be available.

Mr. Hecht: All right. Then another question, Mr. Lonnberg.

Q. (By Mr. Hecht): On August 25 you entered the plant at about noon, did you not?

A. I don't recall the exact time.

Q. You entered the plant together with a number of other employees that were going to work, did you not? A. No.

Q. You are certain of that? A. I am.

Q. You are certain that there was a watchman in that sentry office?

A. I am, because I spoke to him.

Q. And did the sentry, to your knowledge, know that you were no longer an employee?

(Testimony of Harold R. Lonnberg.)

A. I don't recall whether we mentioned it to him or not.

Q. And he may well have assumed that you were still an employee?

Mr. Tobriner: Objected to on the ground whether he did or not assume it is something that is entirely suppositious and calls for a conclusion.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Hecht): Do you know the name of the watchman?

Mr. Rowell: Do you want to take action against the watchman now, Mr. Hecht?

A. I would prefer not to name the man. He is still employed there.

Mr. Hecht: I don't think there is any harm in having the name of the watchman. After all, he knew him, and he spoke to him, unless Mr. Lonnberg probably believes that it was wrongful to enter without registering, and that some harm may come to the watchman because Mr. Lonnberg did not comply with Company regulations.

Mr. Tobriner: Will those remarks of counsel please be stricken, imputing anything to Mr. Lonnberg?

Trial Examiner Ruckel: They may be stricken, but we cannot go on withholding names.

Mr. Rowell: We are advised that the watchman has since died, and, therefore, is beyond the reach of the company.

Mr. Hecht: We will exhume him.

(Testimony of Harold R. Lonnberg.)

Q. (By Mr. Hecht): So may we have the name of the watchman, please?

A. I don't know the man's full name. I believe his name was Otto.

Q. Otto. If I told you his name was Otto Lindberg, would you recognize the last name? [238]

A. I am not familiar with the man's last name.

Q. Were you wearing your badge?

A. No.

Mr. Hecht: That is all.

Mr. Rowell: Could I ask just one question?

Trial Examiner Ruckel: Go ahead.

Redirect Examination

By Mr. Rowell:

Q: Did you observe, and are you able to state with reasonable accuracy the number of people present at that July 30 meeting, Mr. Lonnberg?

A. At the July 30 meeting there was approximately 275.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: No further questions.

Mr. Edises: May I offer Intervener's 4? It has been identified.

Trial Examiner Ruckel: It may be received.

(Thereupon the document heretofore marked Intervener's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Ruckel: That is all.

(Witness excused.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record. [239]

Mr. Hecht: May I recall Mr. Lonnberg for just a couple of questions?

HAROLD R. LONNBERG,

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Recross-Examination

By Mr. Hecht:

Q. Mr. Lonnberg, I think you have testified that you were a member of a Strategy Committee on behalf of the AF of L?

A. If it can be called that.

Q. Are you familiar with something called "Progress Reports," a leaflet?

A. I saw some of them.

Q. Do you know if they were prepared under the direction of the Strategy Committee?

A. Most of them were prepared under the direction of Mr. Harvey E. Howard, our representatives.

Q. And, speaking generally of the leaflets, were they distributed at the plant, do you know?

Mr. Rowell: If you know?

A. I did not know that they were distributed at the plant. I did not know anyone had distributed them.

Q. (By Mr. Hecht): Do you know what the purpose of these leaflets was then? [240]

Mr. Tobriner: I object on the ground the leaflets will speak for themselves.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: He may answer.

A. They were pursuant to an election to be held between the CIO and AF of L.

Q. (By Mr. Hecht): They were intended to be distributed, were they not, Mr. Lonnberg?

A. They were.

Mr. Tobriner: Objected to.

Q. (By Mr. Hecht): Did your Strategy Committee have any plan for the purposes of distributing these leaflets?

A. I didn't have any knowledge of it.

Q. You didn't. Do you know of anybody who has any knowledge of it?

A. If there was any such plan I believe Brother Luchsinger can answer.

Q. Brother Luchsinger can answer. Do you know who attended to the writing and mimeographing of these leaflets?

A. Mr. Harvey E. Howard.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Royster: No further questions.

Trial Examnier Ruckel: That is all.

(Witness excused.)

We will recess until 1:30. [241]

(Whereupon, at 12:00 a. m. a recess was taken until 1:30 p. m. of the same day.) [242]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 p. m.)

Trial Examiner Ruckel: The hearing will be in order.

Mr. Royster: Mr. William Sherman.

WILLIAM SHERMAN,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address for the record, Mr. Sherman.

A. My name is William Sherman. I live at 1515 Kains Avenue, Berkeley.

Q. Are you at present employed?

A. Yes, I am.

Q. What is your employment?

A. I am working for the Yellow Cab Company in Oakland.

Q. You were employed by the respondent, were you not? A. That is true.

Q. And for what period of time?

A. From June 15, 1929, until August 4, 1945.

Q. Were you a member of the CIO during your employment with the Company? A. I was.

Q. For what period?

A. 1938 until the termination of my employment, I suppose.

(Testimony of William Sherman.)

Q. Mr. Sherman, did you attend a meeting of Colgate employees on July 30, 1945?

A. I did.

Q. And were you Chairman of that meeting?

A. I was.

Q. And you were selected as one of a committee of four to go to the respondent? A. I was.

Q. Do you know anything of a telegram sent to the ILWU on July 30, 1945?

A. I know of two telegrams, one sent to the ILWU, and one sent to the Colgate-Palmolive-Peet Company; Mr. Railey.

Q. Well, I show you Board's Exhibit 5 and ask you if that is one of the telegrams?

A. (Examining document): That is a copy of one of the telegrams.

Q. And I show you Board's Exhibit 6.

A. (Examining document.)

Q. Is that also a copy of the telegram sent to the Company?

A. That is a copy. Pardon me. That is my recollection.

Q. Now, did you go to Mr. Railey's office on the morning of July 31, Mr. Sherman? A. Yes.

Mr. Hecht: May I see those, please?

Mr. Royster: Yes. I just had them typed up (handing documents).

Mr. Hecht: Yes.

Q. (By Mr. Royster): At this meeting in Mr. Railey's office on the morning of July 31, Mr. Sherman, was there any mention of a telegram?

(Testimony of William Sherman.)

A. Yes. I told Mr. Railey that we had sent a telegram and that he probably would receive it very shortly.

Q. And do you know whether or not he did receive it?

A. If I can recall correctly, he did receive it while we were in the meeting.

Q. Did he so announce to you?

A. Yes, he did.

Q. Did you have a telephone conversation with Mr. Altman on August 2? A. I did.

Q. And what was that conversation?

A. Well, my vacation was ending on August 4, and I still hadn't received any notice from the Union or company to the effect that my employment there was terminated, outside of verbal, they told me in the office, and I didn't know exactly what status I stood in as far as employment was concerned, and I asked him what I would do on August 4, whether I would return to work or not. And [245] he informed me that I was one of the ones to be suspended, and that there wouldn't be any use of me coming down there to be fired.

Q. Now, Mr. Sherman, I show you what purports to be a copy of a letter, and I will ask you if you received the original of it.

A. (Examining document): I can't say as to whether this is the original. However, I still have the original if it is——

(Testimony of William Sherman.)

Q. (Interposing): Do you have it with you?

A. Yes, I have.

Q. May I see it, please?

A. This letter is dated July 30, 1945. However, I didn't receive it prior to the telephone conversation I had with Mr. Altman.

Mr. Royster: I offer the writing in evidence as Board's Exhibit 11.

Mr. Rowell: No objection.

Mr. Hecht: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document above referred to was marked Board's Exhibit 11 and received in evidence.)

Q. (By Mr. Royster): Did you become a member of the AF of L, Mr. Sherman? A. I did.

Q. That was subsequent to your suspension?

A. Following my suspension, yes.

Mr. Hecht: I beg your pardon?

(The answer referred to was read by the reporter.)

Mr. Royster: I think perhaps I better clear that a little bit.

Q. (By Mr. Royster): When do you understand that you were suspended?

A. Well, I understand that I was suspended as of July the—or August 2 when I called Mr. Altman.

Mr. Hecht: Mr. Royster,——

Mr. Royster: Yes.

Mr. Hecht: Might I suggest the best evidence

(Testimony of William Sherman.)

of Mr. Sherman's suspension might be the letter that is already in evidence with reference to the first nine men who were suspended?

Mr. Royster: That was a letter from the ILWU to the Company.

Mr. Hecht: Yes, and I think there has been testimony that the letter was referred to at the meeting of July 31.

Mr. Royster: The only point I had in mind here was in establishing a little bit more closely the date that he became a member of the AF of L. I should have done it without all this circumfusion.

Q. (By Mr. Royster): What date did you join the AF of L, [247] if you recall?

A. I think that I signed an application for the International Chemical Workers Union on August 3rd, on or about. I am not quite sure.

Q. Have you attempted to seek reinstatement of your employment at the respondent?

A. Well, I have twice, once by telephone, and another time, on August 17, with eight other people who were suspended.

Q. Did Sanford Moreau accompany you to the respondent's office on August 17? A. He did.

Q. And Clyde W. Haynes? A. He did.

Q. You have heard the testimony of the other witnesses in that respect, have you, Mr. Sherman?

A. Yes, I have.

Q. And do you have anything to state other than what they have said about the result of that meeting?

(Testimony of William Sherman.)

A. Well, to the best of my knowlewge, we went to the gate, and until the last whistle blew—at such time we went into Mr. Altman's office, and I think the conversation was, or the question was as to why were we there.

Trial Examiner Ruckel: Well, counsel asked you if your testimony would be about the same as that of the other [248] witnesses you heard?

The Witness: Approximately the same.

Trial Examiner Ruckel: Is there any material change that you care to make?

The Witness: Not of any value that I can think of, that is, the words that I would put it in might be a little different, what I would say.

Trial Examiner Ruckel: But in substance that is correct from your recollection, is that right?

The Witness: That is right.

Q. (By Mr. Royster): You acted as spokesmen for the group on this occasion, did you, Mr. Sherman? A. I did.

Mr. Royster: I believe that is all.

Q. (By Mr. Rowell): Mr. Sherman, at this meeting of July 30 did you make an attempt to count or estimate the number of employees there?

A. There was a count taken.

Q. Do you know the result of that count?

A. To the best of my knowledge it was between 270 and 275.

Q. All right. And as to the meeting of July 31,

(Testimony of William Sherman.)

was there a count or an estimate made of the number of employees present?

A. I think there was a count, but I can't recall just what the figures were. [249]

Q. Would you say it was over 200?

A. It was far over 200; at least 250, if I remember correctly.

Mr. Rowell: May we go off the record for just a moment, Mr. Examiner?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Rowell): You were on vacation during the time. What were the dates, the beginning and ending of your vacation?

A. Well, the vacation was to end August 4; it was the two weeks preceding August 4, whatever that date would fall on. I can't remember now.

Q. You were on vacation on July 30, 31 and August 1 and August 2?

A. I was, that is right.

Mr. Rowell: That is all I have. Nothing further.

Cross-Examination

By Mr. Hecht:

Q. Mr. Sherman, were you present at a dinner meeting of the Welfare Employees Association July 26? A. I was.

Q. Mr. Sherman, did you preside at that meeting, too? A. I did.

(Testimony of William Sherman.)

Q. Were there minutes of that meeting taken?

A. I don't think there was.

Q. You are certain there were no minutes?

A. I am not going to say I am certain, because I don't know exactly. Somebody might have been taking minutes that I didn't—not to my knowledge there were no minutes of the meeting.

Q. Do you know if there was anyone appointed to take minutes of that meeting? A. No, I don't.

Q. Do you know whether minutes purporting to be that of the meeting of July 26 were read at the meeting of July 30? A. There was not any that I know of.

Q. You were presiding at that meeting, too?

A. That is right.

Q. Will you tell me, if you know, who took the count of the employees at the meeting of July 30?

A. I think Lincoln Olsen was one of them. Who the other was, or the others were, I don't know.

Q. From whom did you receive your information?

A. I received it by a piece of paper that was put in front of me during the meeting.

Q. Have you that piece of paper?

A. No, I haven't.

Q. Do you know who gave you the piece of paper?

A. I think Lincoln Olsen brought it up. [251]

Q. Who took the count of the employees in the meeting on July 31? A. 31?

(Testimony of William Sherman.)

Q. Yes. A. Sorry, I don't recall.

Q. How did you get to know that there was that number of employees there?

A. Going by my recollection to a thing that happened six months ago. That is all I can say.

Q. You don't recall anybody giving you the information?

A. No. It was word of mouth if——

Q. Somebody told you?

A. That is right.

Q. So that all you have testified to as to the number of members present is something somebody, that you don't recall, told you?

A. That is right.

Q. Mr. Sherman, you have testified that you signed an application for membership in the Chemical Workers Union, A. F. of L., on or about August 2?

A. 2nd or 3rd, on or about. I don't know.

Q. Yes. When did you become a member?

Mr. Rowell: That is objected to. It is asking for the conclusion of the witness.

Mr. Royster: I object to it on the grounds of its [252] materiality.

Mr. Hecht: It is a preliminary question, Mr. Examiner.

Trial Examiner Ruckel: He may answer if he knows.

A. I think I have answered it already.

Q. (By Mr. Hecht): In other words, it is your

(Testimony of William Sherman.)

understanding of the rules of the A. F. of L. that upon filing your application you become a member?

A. Providing your application is acceptable.

Q. Yes. Was it acceptable and accepted?

A. It must have been. I am a member now.

Q. When did you become a member? Were you a member—let me put it this way: Were you a member on August 17? A. Yes.

Q. Mr. Sherman, you have been in the past an officer of the ILWU, haven't you?

A. Correct.

Q. And you are familiar with the ILWU constitution and by-laws?

A. Well, I probably was a great deal more familiar at the time I was an officer than I am right now.

Q. Yes. Well, you were quite familiar with those rules on August 17, let us say?

A. I would say "Quite," yes.

Q. Yes, sir. Mr. Sherman, as a former officer of the ILWU and as an employee of the Respondent, have you any [253] recollection or any memory of a contract dated July 9, 1941, between the Respondent and the ILWU? A. I have.

Mr. Hecht: May I have the Board's Exhibit 7?

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): I am showing you Board's Exhibit 7, a copy of the contract which I have just referred to. A. What section, please?

Q. Section 3 on the first page.

A. (Examining document): Yes.

(Testimony of William Sherman.)

Q. On August 17 you already knew that you had been—or, rather, withdrawn that.

On August 17, 1945, you knew that the Respondent had been notified by authorized officers of the ILWU that you were no longer a member in good standing of the ILWU?

A. I can't say that I knew it for certain. I don't know what conversations took place.

Q. Did you see the letter of July 30, or 31—I don't recall—1945, which Mr. Railey had in his office when that meeting was had in his office on July 31?

A. What letter are you referring to?

Q. From the ILWU to the Respondent?

A. No, I did not.

Q. At any rate, you were a member of the A. F. of L. on August 17? [254]

A. According to my recollection, yes.

Q. Did you think that as a member of the A. F. of L. you could obtain employment in a plant having a closed shop contract with the CIO?

Mr. Rowell: Now, wait a minute! That is certainly objectionable.

Mr. Royster: I will object.

Mr. Hecht: No, it isn't.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: Mr. Examiner, when an official body of the United States government, namely, the United States Labor Relations Board, takes a charge from persons who are seeking reinstatement with the Company, issues a complaint on it, orders a hear-

(Testimony of William Sherman.)

ing on it, at least there is some prima facie evidence that it is at least conceivable that these people are entitled to employment at the Respondent's plant. Now, this continual questioning to try to show this is bad faith to request reinstatement——

Trial Examiner Ruckel: Why argue? Your objection has been sustained.

Q. (By Mr. Hecht): Mr. Sherman, I show you a photostatic copy of a letter dated July 31, 1945, on the stationery of the ILWU, addressed to Colgate-Palmolive-Peet Company.

Will you look at this copy and tell me whether you have seen the original or a copy before? [255]

A. (Examining Document): I have never seen it.

Q. Mr. Sherman, there has been some testimony here as to a Strategy Committee formed by persons who had formerly belonged to the Employees Welfare Association to carry on an election campaign for the AFL.

Did you hear of such a Strategy Board?

A. The term "Strategy" was never——

Q. (Interposing): Call it what you will.

A. It was never used, to my knowledge. There was a committee selected as contact people. That is the word we used.

Q. Were you here this morning when Mr. Lonnberg testified? A. I was.

Q. Did you hear Mr. Lonnberg's answers to my questions with reference to certain mimeographed leaflets?

(Testimony of William Sherman.)

A. I don't know what mimeographed leaflets you are referring to.

Q. I will show you one. I have one with your photograph, as a matter of fact.

A. I am familiar with what they call the progress report, yes.

Q. Can you tell us who prepared those reports?

A. Why, they were prepared in the office of Harvey, Howard.

Q. You heard Mr. Lonnberg testify this morning that it was intended that they be distributed among the employees of the plant? [256]

A. Well, we didn't intend to use them for wallpaper.

Mr. Hecht: Will you answer my question?

Mr. Rowell: He has answered it.

Q. (By Mr. Hecht): In other words, you intended them to be distributed?

A. I didn't think—they were intended to be distributed, yes.

Q. Did you have any part in the distribution of those leaflets? A. I did not.

Q. You did not? A. No.

Q. Can you tell me who distributed those leaflets or attended to it? A. No.

Q. You don't know? A. I do not.

Q. Were they distributed to you?

A. Yes, I got a copy through the mail.

Q. You got copies through the mail?

A. That is right.

(Testimony of William Sherman.)

Q. Will you tell me if you got a copy of this one (handing document)?

A. (Examining document): I am sorry. I can't recall this particular one, or haven't got a copy of this particular [257] one.

Q. You will note below that it called for a meeting for August 8. A. That is right.

Q. Do you recall it now?

A. I still can't recall whether I got any knowledge of the meeting through that pamphlet or not.

Q. Would you say that it was one of those leaflets that was prepared at the office of Harvey Howard?

A. Oh, I think they were all prepared there.

Mr. Hecht: May we have this marked for identification as the Respondent's Exhibit 1?

Mr. Rowell: Well, I object to the introduction. The testimony has only been so far——

Mr. Hecht: Only for identification.

Mr. Rowell: Well, all right. I will withdraw the objection.

(Thereupon, the document above referred to was marked Respondent's Exhibit 1 for identification.)

Q. (By Mr. Hecht): I show you Respondent's Exhibit 1 for identification, dated August 7, 1945.

A. Yes.

Q. That was also prepared in Mr. Harvey Howard's office? A. That is right.

Mr. Hecht: May we have this marked Respondent's Exhibit [258] 2 for identification?

(Testimony of William Sherman.)

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Royster: I think we can stipulate, probably, that whatever you have there came from Mr. Howard's office.

Mr. Hecht: All right, if you wish to stipulate.

Mr. Royster: I would like to look at them.

Mr. Hecht: Before stipulating?

Mr. Royster: Yes. You might be mistaken as to where some of those came from.

Mr. Hecht: Well, the witness can identify them.

Q. (By Mr. Hecht): I show you another leaflet dated August 10, 1945.

A. (Examining document): I couldn't very well identify these without studying them line for line because I don't know—in fact, I might have to even compare them with some that I still have around the house to identify them as exactly the ones.

Q. You can't identify that one?

A. No, I can't identify this one, or any of them, that is, for a certainty.

Q. Have you changed your mind, Mr. Sherman——

Mr. Rowell (interposing): Well, now, wait a minute. Obviously he is being a very careful witness. You wouldn't be able to state that something was a copy of something you [259] saw six months ago word for word, necessarily.

(Testimony of William Sherman.)

Mr. Hecht: There are lots of things of which they have a very clear recollection that occurred six months ago, Mr. Rowell.

Mr. Edises: May we go off the record for a moment, Mr. Chairman?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Better mark this Respondent's Exhibit 3 for identification.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Trial Examiner Ruckel: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Hecht: Mr. Examiner, it is stipulated by and between counsel for the Board, counsel for the complainants, counsel for the intervener, and counsel for the respondent that certain mimeographed leaflets, most of which bear the title, "Progress Reports," were mimeographed and prepared at the office of Harvey Howard——

Mr. Edises (interposing): May I interrupt? I don't think that is material. My understanding is that some of these things, not all of these things, were Howard's jobs. [260] There was collaboration and various people worked on them.

(Testimony of William Sherman.)

Mr. Hecht: I say that they were merely prepared and mimeographed at his office.

Mr. Royster: On behalf of the AF of L Union.

Mr. Edises: Why not put it that way?

Mr. Hecht: On behalf of the AF of L members for the purpose of being distributed among the employees of the respondent.

And if the Examiner wants, I will just read off the dates to be admitted in that order.

Trial Examiner Ruckel: Why don't you just have them marked, giving them the next succeeding number?

Mr. Hecht: 4 will be one dated September 12, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 4 for identification.)

Mr. Hecht: Another is September 15, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Mr. Hecht: Another dated September 18, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 6 for identification.)

Mr. Hecht: The next is dated September 27, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 7 for identification.)

(Testimony of William Sherman.)

Mr. Hecht: The next is dated September 29, 1945. [261]

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 8 for identification.)

Mr. Hecht: The next is dated October 2, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 9 for identification.)

Mr. Hecht: The next is dated October 9, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 10 for identification.)

Mr. Hecht: And October 11, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 11 for identification.)

Mr. Hecht: And October 12, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 12 for identification.)

Mr. Hecht: October 13, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 13 for identification.)

Mr. Hecht: October 15, 1945.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 14 for identification.)

(Testimony of William Sherman.)

Mr. Hecht: And then there is a ballot without date which will be next in order.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 15 for identification.)

Trial Examiner Ruckel: Is that stipulated to, gentlemen? [262]

Mr. Edises: So stipulated.

Mr. Rowell: So stipulated.

Mr. Royster: So stipulated.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: They will be received.

(Thereupon the documents heretofore marked Respondent's Exhibits Nos. 1 to 15 inclusive, for identification, were received in evidence.)

Trial Examiner Ruckel: Now, for my information, what materiality is claimed for these?

Mr. Hecht: May it please the Examiner it is charged in the complaint that we did not permit the distribution of AF of L circulars while permitting the distribution of CIO circulars throughout the plant.

Our answer pleads that innumerable leaflets emanating from both sides were distributed in the plant and that we in no wise interfered with the distribution of——

Mr. Rowell: Well, I presume the offer will be tied up with proof of distribution?

Mr. Hecht: Yes.

(Testimony of William Sherman.)

Trial Examiner Ruckel: At least these are the pamphlets referred to?

Mr. Hecht: Yes.

Q. (By Mr. Hecht): Mr. Sherman, you were, you said, [263] presiding at the meeting of October 30, 1945?

Mr. Royster: That is July 30.

Q. (By Mr. Hecht): July 30, 1945?

A. That is right.

Q. Was there anything stated by anybody on the platform having to do with the question of racial discrimination?

Mr. Rowell: That is objected to as utterly immaterial.

Mr. Royster: I object.

Trial Examiner Ruckel: Read the question, please.

(The question referred to was read by the reporter.)

Trial Examiner Ruckel: What date was this?

Mr. Hecht: July 30, 1945.

Trial Examiner Ruckel: Objection sustained. You may wish to recall him later. This may not be a factor in the case.

Mr. Hecht: All right. When do you expect to close, Mr. Royster?

Mr. Royster: I think Friday evening.

Mr. Hecht: And we will continue on Saturday, I take it, Mr. Examiner?

(Testimony of William Sherman.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Any further questions of this witness?

Mr. Hecht: No further questions on my part.

Mr. Rowell: Well, just a minute. I thought Mr. Edises wanted to ask——

Mr. Edises: Yes, I haven't questioned the witness yet.

Trial Examiner Ruckel: I am sorry.

Q. (By Mr. Edises): Mr. Sherman, you attended the meeting of July 30, did you not?

A. I did.

Q. That was held what time of day?

A. 4:15 I believe.

Q. 4:15. That was after you had received the rejection from the Company of your demand that the Stewards be put back? A. After, you say?

Q. After? A. No, it was before.

Q. Before? That is right.

Now, what was the purpose of that meeting?

A. Well, apparently the——

Q. (Interposing): Excuse me a minute. Just a second. The meeting was held after the Stewards had been suspended, correct?

A. That is right.

Q. Now, what was the purpose of the meeting?

A. Well, the purpose of the meeting, I presume, was to see if the entire group wanted to discontinue affiliation with [265] the ILWU, I believe.

Q. At least that was the question that the spon-

(Testimony of William Sherman.)

sors at the meeting intended to put to the persons present, is that correct? A. That is right.

Mr. Edises: Now, may I see those telegrams, please?

(The documents were handed to Mr. Edises.)

Q. (By Mr. Edises): I have this telegram of July 30 here, Board's Exhibit 5, sent to the Warehouse Union, and notifying the Union that 200 employees of the Company are hereby withdrawing from the Union and refuse to be further bound by any laws, rules or regulations of the Union.

Mr. Rowell: It says, "More than 200 employees," Mr. Edises.

Mr. Edises: I am sorry. "More than 200," I assure you, it was unintentional.

Mr. Rowell: Right.

Mr. Edises: After all, it is in the record.

Q. (By Mr. Edises): Now, with that telegram in mind, Mr. Sherman, I would like to ask you when you placed your own severance of affiliation from the ILWU?

Mr. Rowell: Well, now, that is objected to as calling for the legal conclusion of the witness.

Mr. Edises: Oh, Mr. Examiner,——

Mr. Rowell (Interposing): It is possible that this witness [266] may be maintaining a suit in court under the advice of counsel that the relationship has never been severed, and is still not severed.

Mr. Edises: Oh, Mr. Examiner——

Mr. Rowell (Interposing): Because the pro-

(Testimony of William Sherman.)

ceedings of the Union by which it was attempted to be severed were illegal.

Trial Examiner Ruckel: Well, there is a telegram which refers to a severance.

Mr. Edises: Certainly.

Trial Examiner Ruckel: Now, whether it was or not I think it is proper to ask as to what time he dates that severance.

Mr. Edises: That is right. In other words, I am only asking him his own case, and I refer to the telegram because I presume, at least common sense would indicate that that would establish the date, but perhaps I am wrong. That is why I wanted to ask the witness.

The Witness: Will you repeat the question, please?

Q. (By Mr. Edises): Well, the question was: When do you consider that your affiliation with ILWU was withdrawn?

Mr. Rowell: Well, we can stipulate the facts on it, can't we? I mean, after all, they did withdraw from the ILWU as a group and attempted to choose another bargaining agent, then all this stuff came up, and the question is still [267] a matter of law as to whether they actually were kicked out by the CIO Union, whether that was legal or not. It is a matter of law rather than—we have got the facts. Why ask his conclusion on it?

Mr. Edises: Well, I don't particularly care whether I get the testimony by the witness or by stipulation. Apparently Mr. Rowell is willing to

(Testimony of William Sherman.)

stipulate that the persons included in that telegram withdrew their affiliation from the ILWU as of the date that telegram bears. That is agreeable to me.

Mr. Rowell: Well, no, I am not ready to stipulate in any such fashion. I am ready to stipulate the facts.

Mr. Edises: I am sorry I misunderstood you.

Mr. Rowell: I am ready to stipulate the facts, not the legal conclusions.

Trial Examiner Ruckel: Well, let's get it from the witness:

One of the telegrams says, "You hereby withdraw," the other says, "Have withdrawn." Both telegrams are dated the same date.

What date did you have in mind as constituting your withdrawal so far as you are concerned, whether it was effective or not, from the CIO?

The Witness: If you are referring to my particular withdrawal from the CIO, it was not the intent of the telegram [268] to segregate individuals as discontinuing affiliations with the CIO. The intent of the telegram was that we were discontinuing the bargaining agency, forming another group.

Mr. Edises: Well, now, I ask that all this testimony as to the intent of the telegram go out. The intent of the telegram is to be determined from the telegram itself. My question was not as to what the intent of the telegram was because I can read; so can the Examiner read. What I wanted to know

(Testimony of William Sherman.)

was what this witness regarded as the date of his withdrawal from the ILWU.

Mr. Royster: Well, now, there seems to be a certain ambiguity.

Mr. Edises: Well, Mr. Chairman, taking first things first, I move to strike the testimony of this witness as to the intent of the telegram on the ground the telegram speaks for itself.

Mr. Royster: Mr. Examiner, if that be true——

Trial Examiner Ruckel (interposing): Well, not necessarily. Motion denied. He can tell what the telegram means, or construe——

Mr. Hecht (interposing): May I say, Mr. Examiner, I don't particularly care in so far as this affects the intervener and the complainants, but I don't think that the respondent should be bound by whatever was the intent of Mr. Sherman or the persons who caused that telegram to be [269] sent.

Mr. Edises: My motion to strike is denied, Mr. Examiner?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Now, may I have an answer to the question, Mr. Sherman, of when you regarded your withdrawal from the ILWU as having become effective?

Mr. Rowell: Well, that is objected to. I must press this objection, Mr. Examiner, because it calls for a legal conclusion of the witness.

Trial Examiner Ruckel: No, the question was when he intended it to be effective. We are not

(Testimony of William Sherman.)

concerned whether it was or not. Perhaps he is still in there, for all I know.

Mr. Rowell: Well, all right, on that understanding I withdraw the objection.

Mr. Hecht: Mr. Examiner, before the answer is given, is it understood that none of his testimony is binding on the respondent as it cannot be bound by whatever the intent of Mr. Sherman was?

Mr. Rowell: That is not understood at all.

Trial Examiner Ruckel: It stands to reason that you are not bound by his answer.

Mr. Edises: He is not the respondent's witness.

Trial Examiner Ruckel: Rephrase your question.

Mr. Edises: All right. I will just rephrase it.

Q. (By Mr. Edises): When did you intend your withdrawal [270] from the ILWU to take effect?

A. Well, I might say that if they had intentions of throwing me out of the Union it would——

Q. (Interposing): No, just a minute, Mr. Sherman. I think the question was a simple one.

Trial Examiner Ruckel: With reference to the statement in your telegram when do you date your intention to withdraw from the Union? As of the date of the telegram or previously, or afterwards?

The Witness: I intended to withdraw from the Union when we became the recognized bargaining agent.

(Testimony of William Sherman.)

Q. (By Mr. Edises): Mr. Sherman, you sent this telegram, didn't you?

A. I did.

Q. Read it, read it aloud.

Mr. Rowell: Well, now, that is not necessary.

Mr. Edises: I submit I want to hear the witness read it aloud. It is cross-examination.

Trial Examiner Ruckel: You may read it aloud if you wish.

The Witness: I don't wish to if I have a choice.

Q. (By Mr. Edises): I will read it aloud. Will you please listen to this, Mr. Sherman?

This is to "International Warehousemen's Union, Local 6. [271]

"You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your Union and being more than 50 per cent of such employees by action taken for such purpose, have and do hereby withdraw from your Union, sever connections and refuse to be further bound by any of the laws, rules, or regulations of the Constitution of I.L.W.U.

Signed: Employees Welfare Association.
By: Negotiating Committee,
E. H. Thompson,
W. P. Sherman."

Now, are you the W. P. Sherman referred to in this telegram?

A. Right; correct.

(Testimony of William Sherman.)

Q. Yes. And did you understand the telegram as I just read it to you?

A. I think I understood it, yes.

Q. Yes. And were you playing tricks on the Union when you sent that telegram, or did you really mean it?

Mr. Rowell: Now,——

Mr. Royster (interposing): I object.

Mr. Rowell: That is an improper question.

Trial Examiner Ruckel: Objection sustained to the form of the question.

Q. (By Mr. Edises): Mr. Sherman, are any of these statements [272] contained in that telegram false?

A. (Examining document): Not to my knowledge, no.

Q. Now, Board's Exhibit 6 is the telegram sent to Colgate-Palmolive-Peet Company, Berkeley, California, stating:

"You are hereby notified of action taken by more than 200 employees of Colgate-Palmolive-Peet Co., all being former members of ILWU 1-6, and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent."

Signed: "Employees Welfare Association, by Negotiating Committee, E. H. Thompson, William Sherman——"

You are the William Sherman referred to in this telegram? A. Yes.

(Testimony of William Sherman.)

Q. And you sent this telegram on or about the date it bears, did you not? A. Right.

Q. Is there any statement in this telegram which is false? A. Not to my knowledge, no.

Q. Now, Mr. Sherman, you were one of those who waited on the Company and endeavored to get the Stewards back to work? A. Right.

Q. And following that the employees walked off the job? A. Correct.

Q. Following your failure to get them back?

A. Following that the work ceased at 12 o'clock, such as it [273] always has.

Q. Yes. Now, I would like to have you explain the circumstances of that cessation of work. What did you have to do with bringing it about, how did you go about it?

A. About the cessation of work?

Q. Yes. Now, I don't want to confuse you. There was a 2½-day stoppage of work, wasn't there? A. Right.

Q. Now, I would like to have you tell me just how that was accomplished in so far as you know?

A. As far as I know it was accomplished by a meeting that the employees chose to attend at 12 o'clock, and never returned.

Q. Well, what event preceded this continuous meeting which, so to speak, precipitated the meeting? In other words, there must have been some sign which led the employees to go out. Now, what was that, how was that determined?

A. There was no sign. You read the minutes of

(Testimony of William Sherman.)

the preceding meeting. The next step would be another meeting to find out what was to be done, to report what we had to say to these people as a result of our meeting with Railey.

Q. Well, now, after you left Mr. Railey's office, Mr. Sherman, you went back into the plant, didn't you?

A. We went back to Mr. Smith's office and were addressed again by Mr. Railey. [274]

Q. And then what did you do about notifying the employees that they were to go out?

A. I informed several employees that there was a meeting at noon.

Q. That was the continuous meeting, so-called; right?

A. That was the one that resulted in a continuous meeting, yes.

Q. Yes. How many employees did you so notify? A. Well, I am sorry; I don't remember.

Q. Well, roughly?

A. Oh, I would say perhaps one or so in each department.

Q. Well, now, what arrangement had you made? What arrangements had you agreed on with the other members of the committee about communicating to the employees the failure of your mission with Mr. Railey?

A. There was no arrangement made.

Q. Well, isn't it a fact that in some way the employees had to be notified that you had not suc-

(Testimony of William Sherman.)

ceeded so that they could take the action that had previously been agreed on?

A. I think they felt that we would come and tell them what action, regardless of whether it was in the plant or otherwise.

Q. Well, it is a fact, isn't it, that the employees were notified that the Stewards were not going to be put back to work? [275]

A. Certain employees were, yes.

Q. Well, you say "certain employees were"?

A. Right.

Q. Did you tell those employees to spread the word around to the others?

A. No, I don't think we did. We presumed that they probably would.

Q. Well, you were concerned to get as many employees out as you could, were you not?

A. Not necessarily, no.

Q. Oh, now, Mr. Sherman, are you tsetifying that you were not interested in getting—that you didn't care how many employees walked out in support of the Stewards?

A. No, I can't say that I particularly cared how many walked out in support of the Stewards, if you use that term.

Q. In other words, it was immaterial to you whether one walked out or 250 walked out? Is that what your testimony is?

A. I believe I can say it was immaterial.

Q. You didn't care, in other words, whether one walked out or 300 walked out?

A. No.

(Testimony of William Sherman.)

Q. Uh huh. Now, after this—well, may I ask this: Were you surprised when some 250 walked out? A. I was, yes. [276]

Q. You didn't really think that any would walk out, did you?

A. I think, Mr. Edises—I don't know if this is an answer to your question or not; you know yourself how difficult it is to get people to a meeting, and especially during wartime. My surprise was that so many people was willing to attend the meeting.

Q. Of course, the fact is you did everything you could to get them to attend, did you not?

Mr. Rowell: That is objected to.

Trial Examiner Ruckel: You may answer.

A. I did everything I could to get them to attend, I notified everybody and left it to their own judgment.

Q. (By Mr. Edises): Yes. Now, after the stoppage began, I presume—I gathered from the testimony of Mr. Lonnberg that there was some kind of coordination of events, some kind of—I think I referred to it as a Strategy Committee, and he accepted that terminology. But was there some kind of coordination of the walkout?

Mr. Rowell: The terminology of counsel there is different from that of the witness. I merely make that observation.

The Witness: Will you repeat that?

Q. (By Mr. Edises): What was done to direct

(Testimony of William Sherman.)

and control and coordinate the employees on—I won't say the strike, [277] but in the walkout?

A. Well, the only thing that I can say to that is what has been testified to already, is that there was a contact committee set up to keep each other informed, and this group was to keep others informed. I believe that was the thing.

Q. What I am interested in is the direction of the thing. In other words, you had several of these continuous meetings, did you not? A. Right.

Q. And I presume you kept your people advised about the progress of events?

A. Probably did.

Q. And there had to be some way of deciding when you were going to go back and so on; that is true, isn't it? A. Correct.

Q. Now, Mr. Lonnberg testified that the group which assumed charge of directing this thing was the Committee of Four, plus the five Stewards, plus certain other persons whom he asked not to be required to name, and I didn't press him to name those persons, and I am not going to press you to name them. But I would like to know just what this Coordinating Committee did. I presume it must have done something with its time during this two and a half days, and I would like to know just what it did?

A. Well, of course, we were shopping around for a union [278] with a strong international. What I done mostly was to go shopping, so to speak, to

(Testimony of William Sherman.)

find out the satisfactory union to represent us.

Q. What else did you do?

A. Well, I presume I answered numerous phone calls from various people, wanting to know how things were progressing, and that is about all.

Q. The matter of the morale of the people out on strike, did you do anything about that? Did you visit them, for example, at their homes?

A. No, I don't think outside of Thompson that I did visit—Thompson and Lincoln Olsen, I don't think I visited any of them.

Q. Now, going back for a moment to the time of your visit to Mr. Railey to try to get the Stewards back, did you tell Mr. Railey of the action that the membership had taken, the resolution?

A. I think that a good part of the conversation centered on trying to persuade Mr. Railey to put the five Stewards to work outside the bargaining unit of the union.

Q. My question was whether you informed Mr. Railey of the resolution that the membership had adopted in regard to these five Stewards.

A. I don't think we gave him the exact words. I think that we requested in every manner that we knew to get the Stewards [279] back.

Q. Well, did you give him the substance of the resolution even though, perhaps, not the exact words?

A. We didn't threaten "no strike," if that is what you mean.

Q. Well, I am not asking you whether you

(Testimony of William Sherman.)

threatened a strike. Mr. Railey was informed, was he not, that the membership had given you authority, or the membership had——

A. (Interposing): Authorized?

Q. Let's not put it that way. ——had resolved that it was not going to return to work unless the Stewards returned to work?

A. Well, I don't think we did, frankly. I don't recall. It has been a long time ago.

Q. Well now, you don't recall whether that was actually stated or not? A. No.

Q. That meeting had been an open meeting, hadn't it? All employees were entitled to be present? A. The meeting of the 30th?

Q. Yes. A. Yes.

Q. As a matter of fact, I believe some one of your colleagues testified that Mr. Railey was there when the membership took the vote?

A. He was. [280]

Q. So he would, of course, know?

A. That is right.

Q. Of the position of the members?

Mr. Rowell: Which would render it unnecessary for this Committee to advise him, Mr. Edises.

Mr. Edises: I do not care to engage in——

Trial Examiner Ruckel (interposing): The witness has answered.

Q. (By Mr. Edises): Mr. Sherman, I show you Respondent's Exhibit No. 15.

That is a sample ballot, and on the rear of the

(Testimony of William Sherman.)

ballot there are a number of pictures. You are included in one of these pictures, are you not?

A. Right.

Q. And the arrow that I draw represents you, does it not? A. Right.

Mr. Edises: Now, I will just, with the Examiner's permission, write "Sherman."

Trial Examiner Ruckel: Is there any objection?

Mr. Hecht: None.

Mr. Royster: No objection.

Mr. Rowell: Let me see it a moment, will you?

(The document was handed to Mr. Rowell.)

Mr. Rowell (examining document): No objection.

Q. (By Mr. Edises): Now, Mr. Sherman, did you have anything [281] at all to do with the preparation of these leaflets which are entitled "Progress Reports"? A. In what manner?

Q. Anything to do with their preparation? Did you help to write any of them, or edit any of them, or suggest the contents of any of them?

Mr. Rowell: I think that is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

A. Oh, I suppose I wrote some of the material that was used. However, I never directly wrote any of them.

Q. (By Mr. Edises): Yes. Can you identify any particular parts that——

(Testimony of William Sherman.)

A. (Interposing): I would rather not, because it would take time. I would have to go over them word for word, and I am not going to identify anything that I can't recall.

Q. No, I don't want you to identify anything you can't recall. I was just wondering if by glancing at some of the passages you might recall the authorship?

Mr. Rowell: He has testified that he participated in the preparation of some portions of those things. It is certainly not important to show which paragraphs he happened to dictate.

Trial Examiner Ruckel: Is that important?

Mr. Edises: I will pass that.

Q. (By Mr. Edises): Mr. Sherman, was there a publicity committee [282] or a leaflet committee of some kind that worked in the preparation of some of these leaflets?

A. I think—no, there was no particular designated committee, I believe.

Q. No designated committee? A. No.

Q. In general, would it be fair to say that the four committeemen and the five Stewards participated in the work of preparing these leaflets?

A. I really don't think that the five Stewards had anything to do with the preparation. Well, yes, one of them—that is, not the preparation, but something to do with the preparation of them, or something. I don't know.

Q. What?

(Testimony of William Sherman.)

A. Dave Luchsinger had more to do with that.

Q. With what?

A. With the carrying of them to the office, to the place where they were mimeographed, and so on.

Q. I am not referring to the physical preparation. I mean working on the contents, drafting them, and so on. Did any of the Stewards have anything to do with that?

A. I don't believe they did.

Q. How about the Committee of Four?

A. I don't think anybody outside of, maybe, one, had anything to do with the writing. However, I can't answer that. [283]

Q. And who was that one?

A. I think Thompson compiled some material that was not used.

Q. But these were the collective responsibility of all of the four on the committee, or the nine, or just——

A. (Interposing): It was not a laid out plan.

Q. It was not a laid out plan?

A. It was a random thing.

Q. But you never attempted in any way to deny that responsibility or authorship for these, that is, the A Fof L did not?

A. I certainly deny authorship of those, yes.

Q. No, I mean the point I am making is there is no question that these were the official bulletins of your organization? A. No question.

Mr. Rowell: He has already testified to that.

(Testimony of William Sherman.)

Q. (By Mr. Edises): Did you generally, Mr. Sherman, know the contents of these bulletins before they were distributed?

A. Some of them, and some of them not.

Q. Some of them you did and some of them you did not? A. Yes.

Q. Did you ever disassociate yourself in any way from any of the views or opinions expressed in these bulletins?

Mr. Royster: I will object to that, as to its materiality. [284]

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Mr. Sherman, you were at one time Business Agent of the ILWU Local 6, were you not? A. Right.

Q. And under what circumstances did you cease to be a Business Agent?

Mr. Royster: I will object to the materiality again.

Trial Examiner Ruckel: He may answer.

A. I lost the election.

Q. (By Mr. Edises): You lost the election when?

A. Oh, I don't recall the month. I lost it in 1943, I believe, the latter part of 1943.

Mr. Edises: I think that is all.

Trial Examiner Ruckel: Any further questions by the Board?

(Testimony of William Sherman.)

Redirect Examination

By Mr. Rowell:

Q. Mr. Sherman, I believe you testified that the purpose of the meeting of July 30, to boil it down to a few words, was to see if the group wanted to discontinue with the ILWU as the bargaining representative? A. That is right.

Q. Did you have the advice of a lawyer in connection with how that was to be done?

A. Not at the time of the meeting, it was following the [285] meeting.

Mr. Edises: Well, now, I object to that as incompetent, irrelevant, and immaterial. What difference does it make?

Mr. Rowell: The question has already been answered.

Mr. Edises: Well, then, I move to strike, Mr. Examiner.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Rowell): Your purpose was to arrange a switch in the bargaining agent through the appropriate legal processes, is that correct?

Mr. Edises: Now, just a moment. I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I was not permitted to ask questions along that line.

Q. (By Mr. Rowell): In regard to these telegrams, Board's Exhibits 5 and 6, did you have the

(Testimony of William Sherman.)

advice of a lawyer in connection with the preparation of those telegrams?

Mr. Edises: Same objection.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Now, you testified as to the number of people that were at the July 30 meeting. I believe you said there was between 270 and 275.

Mr. Hecht: I beg your pardon. I don't mean to impute anything, but I think he testified that somebody told him that that number of people were there. [286]

Trial Examiner Ruckel: Well, it has been testified as a substantial majority. Isn't that satisfactory?

Mr. Rowell: No, your Honor, I don't think it is.

Mr. Edises: Even stipulated.

Mr. Rowell: I think if there were 270 out of 300 employees there that is immaterial, I would have let it stand, as it were, if Mr. Hecht hadn't considered it material to try and cut down the force of——

Trial Examiner Ruckel (interposing): Let's leave it. It doesn't make a particle of difference as far as this case goes whether it was one more than a majority, or 50 more than a majority.

I thought you were all satisfied with that yesterday?

Mr. Edises: We stipulated to it.

Mr. Rowell: I was satisfied until Mr. Hecht

(Testimony of William Sherman.)

tried to cut down the force of the testimony of the witness.

Mr. Hecht: I just wanted to know how he knew.

Mr. Rowell: Well, I want to ask one more question if the objection to it is sustained.

Q. (By Mr. Rowell): I will ask you, Mr. Sherman, as to whether the number of people present at the July 31 meeting was approximately the same as the number present at the July 30 meeting, or only slightly less.

A. I think that there was—it was about the same, if I recall. [287]

Mr. Rowell: I have no further questions.

Mr. Hecht: I have two more questions, I believe.

Recross-Examination

By Mr. Hecht:

Q. Under examination by Mr. Edises, Mr. Sherman, you started to say that the ILWU was about to throw you out? Or did I misunderstand you?

A. You misunderstood me.

Q. What were you going to say? Will you complete that statement?

Mr. Edises: It seems to me, if I may interpose here, the questions is so general it really calls for this witness to just volunteer whatever happens to come into his head.

Mr. Hecht: Well, I won't pursue it. That is all right.

(Testimony of William Sherman.)

May I have the exhibits which is the minutes of the meeting of July 30?

Mr. Royer: It is Intervener's 2.

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): Mr. Sherman, you testified that Mr. Railey was present at the time that the following motion was adopted, and I am reading from the minutes:

"'Motion that we go back tomorrow morning pending settlement of Five Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Was Mr. Railey present when that resolution was [288] adopted?

A. There is either a misunderstanding there on our part, or my part. I don't believe he was there when that was adopted, that resolution.

Mr. Rowell: Maybe we had a mix-up. I think we will stipulate Mr. Railey was not at that July 30 meeting, as a matter of fact.

Isn't that correct?

Mr. Royster: That is my understanding.

Mr. Hecht: It was testified under examination by Mr. Edises that Mr. Railey was present when the resolution for the work stoppage was adopted.

Mr. Rowell: Well, let's clear up the confusion, if you wish, just by stipulation.

Mr. Hecht: Yes, it is stipulated that he was not there.

(Testimony of William Sherman.)

Mr. Rowell: That is right.

Mr. Royster: Agreed.

Mr. Hecht: No further questions.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

(Witness excused.)

Now, Mr. Examiner, I have Edwin Thompson and Dave Luchsinger present in the hearing room. Mr. Luchsinger was a Steward. Mr. Edwin Thompson was a member of the Negotiating Committee who sought the reinstatement of the [289] Stewards. They can testify to nothing except what has already been covered by other witnesses. However, they are present in the hearing room, and I offer them for the examination of any of the parties.

Trial Examiner Ruckel: Well, if they can't tell us anything additional, let us dispense with them.

Mr. Edises: I would simply ask a couple of things that I would like to establish from them, and, incidentally, I forgot to ask those things of Mr. Sherman.

Mr. Rowell: Let's recall Mr. Sherman then.

Trial Examiner Ruckel: Now, we are in this position. The Board has indicated it doesn't care to call them as its witnesses. Now, you have indicated if they were called you might be able to utilize some part of their testimony.

Let's take a brief recess and see if we can't stipulate. Recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Edises: The statement was made by counsel for the Board that he did not intend to call a couple of additional witnesses, and I stated that there were a couple of things I wanted to bring out, and we have now reached a stipulation which will eliminate the necessity of calling these witnesses.

Mr. Royster: Will you name the witnesses?

Mr. Edises: They are David Luchsinger, Edwin Thompson, Sanford Moreau, and Clyde Haynes.

Off the record.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: All right, this is limited to these four: the ILWU throughout the period World War II had bound itself and its membership to re-*frame* from any strike activity during the war in the following terms: No, in substantially the following terms: A pledge to President Harry S. Truman and the nation: "On behalf of the entire membership of the International Longshoremen's & Warehousemen's Union we renew and give to President Harry S. Truman and the nation our solemn pledge that until the war is ended, with the unconditional surrender of Japan, we will not strike, stop work, or cease or slow production for any reason whatsoever.

"We reiterate that this is an unconditional pledge given in the knowledge that our first duty is

to our nation, and that despite provocation we must take no action that will imperil our nation or cause the prolongation of the war, or cause the unnecessary loss of so much as one Allied life.

"We further make the positive pledge that we will do everything in our power to shorten the war by lending [291] ourselves to intelligent solution of the manifold manpower problems and to the development of all possible means to speed production."

This resolution was adopted unanimously June 29, 1945, by the ILWU Executive Board, and in substance is the same resolution which was the official policy of the Union throughout the entire war period.

It is stipulated between the parties to this proceeding that the four individuals just named had knowledge of this no-strike pledge at the time of the events referred to in the complaint.

Mr. Royster: So stipulated for the Board.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster and Mr. Rowell, I think so time ago you asked me for a stipulation with reference to the number of employees at the plant on July 30, 1945.

Mr. Rowell: Yes.

Mr. Hecht: At that time there were 313 employees.

Trial Examiner Ruckel: 313?

Mr. Hecht: 313 employees, including Assistant

Foremen but not Foremen, and not including 7 service men who were working there part time.

Mr. Royster: In other words, Mr. Hecht, the 313 were those included within the bargaining unit represented under [292] the contract by the ILWU?

Mr. Hecht: Well, I wouldn't want to go that far because we have, I think, one or two foremen who, despite their positions as foremen, are also Union members and are, apparently, represented by the ILWU. As a matter of fact, Mr. Wood has just informed me that we only know of one foreman who is a Union member that we are sure of.

Mr. Royster: Well, of course, we are confusing union membership here with inclusion in a bargaining unit. I don't know that this is any time to discuss that anyway.

Mr. Hecht: Well, isn't it sufficient for your purposes, though, the fact that there were 313?

Mr. Royster: Yes, it is.

Mr. Rowell: I think it is sufficient. We will accept the stipulation.

Mr. Royster: Accepted for the Board.

Mr. Edises: May I ask whether the parties will include Mr. Sherman in the stipulation just made as to knowledge of the no-strike pledge?

Mr. Rowell: Yes, we will include him in the stipulation.

Mr. Royster: We will include him.

Mr. Hecht: Another stipulation that may save time in the examination of the witnesses of the respondent, Mr. Royster, will it be stipulated that

the respondent was at the time that these events related in the complaint took [293] place engaged in the manufacture of glycerin, a product necessary to the conduct of the war?

Mr. Royster: I wonder if you would be willing to add to that stipulation that none of the employees who were working on any of the processes or on the glycerin processes were discharged, or sought to be suspended from membership by the ILWU?

Mr. Edises: I don't think that we could agree to any such stipulation because our information is that there was a substantial curtailment of production of war materials as a consequence of the walkout.

Mr. Rowell: Well, the walkout is different than this last point.

Mr. Hecht: May we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Let the record note that there was no stipulation reached on the latter point.

Anything further?

Mr. Royster: Now, Mr. Hecht, I am not quite certain whether you had any question to pose to Mr. Luchsinger or not.

Mr. Hecht: Yes, of limited scope. I only want to refer him to his visit to the plant on August 5, 1945. [294]

Mr. Royster: All right, Mr. Luchsinger.

Mr. Hecht: And this will be considered cross-examination?

Mr. Royster: Oh, that is agreeable to me.

DAVE LUCHSINGER,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the record, Mr. Luchsinger?

A. Dave Luchsinger, 434 65th Street, Oakland.

Mr. Royster: The Board has no questions of Mr. Luchsinger.

Mr. Hecht: All right.

Cross-Examination

By Mr. Hecht:

Q. Mr. Luchsinger, it has been testified that you, in the company of Mr. Harvey and Mr. Harold Lonnberg, visited the Colgate Plant on August 25, 1945.

A. That is right, on or about that date.

Q. Yes. At that time you were not an employee of the company?

(Testimony of Dave Luchsinger.)

A. I was not working there at the time.

Q. Yes. Did you register at the gate before entering the plant? [295]

A. No, I did not. I talked to the watchman at the gate and he said to go right in.

Q. What did you say to the watchman at the gate?

A. Well, we walked out—we got out of the machine across the street, and we walked over to the watchman, and he was in the cabin there, a little doghouse, they call it, and we talked to him a while. I don't know just what words were spoken, and he said for us to go right in.

Q. Do you know whether the watchman knew that you were no longer working at the plant?

A. That I couldn't say, whether he knew. I think he knew we were out, but he didn't know whether—what else was—whether we were coming back or what.

Q. Did you have your badge on?

A. What badge?

Q. Your workman's badge, the one that was worn at Colgate?

A. I never had a badge. I never did walk in there with a badge. I ain't got one. I never did have one since I worked there.

Q. You never wore a badge?

A. I never wore one.

Q. Now, do you know of a certain sign that is over the gate, or near the gate?

A. I don't know. The gates were both wide open

(Testimony of Dave Luchsinger.)

when we walked in. I don't know if there was a sign on them or not. [296]

Q. It is on the side of the gate as you go in, Mr. Luchsinger?

A. I didn't look at the side. I didn't notice any sign at the gate.

Q. How many years had you been working at Colgate-Peet? A: A little over nine years.

Q. Mr. Luchsinger, the sign I have reference to reads as follows:

"By order of the United States Government, all persons entering this plant must register."

Have you ever seen such a sign?

A. Not to my knowledge. There might be one there, but I never—I don't know what it says there.

Q. All right. Mr. Luchsinger, will you tell me if you have any information on the subject, whether before or after August 25, 1945, you ever asked any executive or agent of the company for permission to enter the plant for the purposes of doing work on behalf of the AF of L?

The Witness: I didn't get that question.

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the reporter.)

A. No, I haven't.

Q. (By Mr. Hecht): The answer is "No"?

A. "No."

Mr. Hecht: Off the record for a moment.

Trial Examiner Ruckel: Off the record.

(Testimony of Dave Luchsinger.)

(Remarks outside the record.) [297]

Trial Examiner Ruckel: On the record.

Mr. Hecht: It is stipulated by and between counsel for the Board, for the complainants, counsel for the intervener, and counsel for the respondent, that the witness and complainant, Mr. Luchsinger, if asked the same questions with reference to his application for reemployment at the plant, and with reference to the collective bargaining agreement dated July 9, 1945, would testify substantially in the same manner as have other witnesses, such as Mr. Sherman, Lonnberg, Marshall, and Olsen.

Mr. Royster: So stipulated by the Board, with a reservation, however, as to the materiality of such questions and the answers elicited.

Mr. Hecht: Very well.

Mr. Edises: So stipulated.

Mr. Rowell: Stipulated with the same reservations.

Mr. Hecht: Will that stipulation also go, Mr. Royster, to Mr. Haynes, Mr. Thompson, and who was the other man?

Mr. Royster: Moreau.

Mr. Hecht: And Moreau?

Mr. Royster: Yes, with the same reservation.

Mr. Rowell: Yes, likewise with the same reservation.

Mr. Edises: So stipulated.

Mr. Hecht: Very well.

Trial Examiner Ruckel: Anything further of the witness [298] then?

(Testimony of Dave Luchsinger.)

Mr. Rowell: Yes, I wanted to ask a question or two.

Redirect Examination

By Mr. Rowell:

Q. On August 25 when you went to the plant you talked with Mr. Carter there, isn't that right?

A. That is right.

Q. What did Mr. Carter tell you to do?

A. He told us we had to leave the plant.

Q. Did he tell you why?

A. Well, he says, "You are no longer employed here. You will have to get out," and he said he was—Mr. Altman and nobody was there, and he was taking over to see that we got out.

Q. Did he know what you were doing so far as activities on behalf of the AF of L?

A. I imagine he did; I imagine he did.

Mr. Hecht: I move to strike what the witness imagined.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Rowell): Had you asked him why Gleichman and Harrison were allowed to stay there on behalf of the CIO?

A. I didn't myself. I think Mr. Howard did.

Q. Yes. What was his answer to that?

A. Well, he says, "They are representing a union," that is what he thought they were, but he was going to go and find out whether they were or not. [299]

Q. Did Mr. Carter at any time tell you the

(Testimony of Dave Luchsinger.)

reason you had to leave was because you had not registered with the watchman when you came in?

A. No, he didn't say that. If he said that I never heard him say it to none of us.

Q. Do you remember him making any mention of registering with the watchman, or anything?

A. No.

Q. Did you ever register with the watchman at any other time when you went into the plant?

A. No, as long——

Mr. Hecht: It is not contended, Mr. Rowell, that employees have to register.

Q. (By Mr. Rowell): By the way, your status at the time, so far as you know, was that of an employee, or a suspended employee, or a discharged employee? Do you know?

A. (No response.)

Q. I am asking for your legal conclusion, I must admit. A. I didn't get you.

Q. Do you know whether you, at the time of August 25 when you went to the plant, whether you were an employee, or a suspended employee, or a discharged employee?

Mr. Edises: Now, one moment. We will adopt Mr. Rowell's objection to that question.

Trial Examiner Ruckel: I will sustain counsel's objection. [300]

Mr. Rowell: No further questions.

Mr. Hecht: No further questions.

Mr. Royster: That is all.

Mr. Edises: I have no questions.

(Testimony of Dave Luchsinger.)

Mr. Hecht: Pardon me. I did want one more question.

Recross-Examination

By Mr. Hecht:

Q. Mr. Luchsinger, you were here present when these exhibits, these pamphlets, these Progress Reports were identified by Mr. Sherman?

A. I was sitting in.

Q. Yes. Did you have anything to do with supplying material for the editing of these Progress Reports? A. I did not.

Q. Did you have anything to do with the distribution of these reports?

A. I did some of them.

Q. Could you tell us how you distributed some?

A. I distributed some to the workers that worked in the plant that is out now, what got suspended on September 1.

Q. Yes. Did you distribute them by going to the gate and giving them to the men as they came out? A. No, I did not.

Q. Where did you distribute them?

A. I took them out to this fellow's home, where he lives.

Q. Did you have a mailing list? [301]

Mr. Rowell: That is immaterial, your Honor. The only question is whether they succeeded in distributing them at the plant.

Mr. Hecht: It is preliminary.

Trial Examiner Ruckel: You may answer.

(Testimony of Dave Luchsinger.)

A. Well, they did have a main list at the office down there. I think they did mail some of them out. I didn't have nothing to do with it.

Q. (By Mr. Hecht): You don't know how many names were in the mailing list, for instance?

A. I do not.

Q. Do you know whether anybody else distributed these leaflets in and about the plant?

A. Not to my knowledge, I don't.

Q. You don't know of anybody taking them to the plant? A. No.

Mr. Hecht: That is all.

Mr. Edises: Oh, just one thing.

Q. (By Mr. Edises): Mr. Luchsinger, were you present at the meeting of July 30 at the Finnish Brotherhood Hall? A. I was.

Q. And did you concur in the following motion: "Motion by Thompson that we withdraw from the C.I.O. and International Longshoremen and Warehousemen's Union, District No. 1, Local 6, form an independent union and seek affiliation [302] with another International. Motion seconded. Vote carried unanimously, in favor 205; opposed, none?"

A. I did.

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Henry Hellbaum.

HENRY HELLBAUM,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the record, Mr. Hellbaum?

A. Henry Hellbaum is my name, and I now live at 944 Key Route Boulevard, Albany. That is a different address than you have there. I have moved since.

Q. What is your occupation now, Mr. Hellbaum?

A. General contractor and builder.

Q. You were employed by the respondent, were you not? A. Yes.

Q. And for what period?

A. From about May 20, 1933, until August 31, '45. [303]

Mr. Hecht: May we go off the record just a moment, Mr. Examiner?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Were you a member of ILWU? A. Yes.

Q. For how long?

A. From the time we were switched in there. I don't remember the exact date.

(Testimony of Henry Hellbaum.)

Q. Until the time you left the employment of the company?

A. That is right; that is correct.

Q. Did you become a member of the AF of L?

A. Yes.

Q. And do you recall about when that took place?

A. No, I don't. It was some time around August 30.

Q. Did you participate with other employees in a continuous meeting starting on July 31?

A. I did.

Trial Examiner Ruckel: We will recess for a couple of minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): With reference to this continuous meeting, when did you join the AF of L?

A. Well, it must have been some time prior—just a day or two prior to this meeting; possibly three or four days. I just don't remember.

Q. Was it about the time of the meeting?

A. About that time.

Q. Now, did you wear an AF of L button in the plant? A. I did.

Q. Did you wear it on your working clothes in plain sight? A. Yes.

Q. Did you distribute any literature for the AF of L? A. Yes.

(Testimony of Henry Hellbaum.)

Q. Did you solicit others to join the AF of L?

A. Yes, I did.

Q. Did you distribute any buttons to other employees? A. I think I did, a few.

Q. Did you have a conversation with Mr. Wood?

A. Yes, sir.

Q. Along about the 8th of August?

A. Yes, sir.

Q. And where did this conversation take place?

A. In the "T.A. Warehouse."

Q. Is that the Toilet Articles Warehouse?

Mr. Hecht: I didn't hear that.

Q. (By Mr. Royster): Is that the Toilet Articles Warehouse? [305]

A. Yes, that is right.

Q. Was anyone present other than you and Mr. Wood when this conversation took place?

A. Well, there were people close.

Q. Within hearing? A. Yes.

Q. Were those that were within hearing other employees in that department?

A. That is right.

Q. Can you name any of them who were within hearing?

A. Well, Ann Nicoletti was the girl's name that took the money at the window.

Q. Nicoletti?

Trial Examiner Ruckel: Is Nicoletti her name?

Q. (By Mr. Royster): Was it Ann Nicoletti?

A. That is who it would be, yes.

Q. Well, was it Ann Nicoletti? A. Yes.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Well, do you think she was in a position to hear what was said between you and Mr. Wood?

The Witness: Well, I wouldn't say as to that.

Q. (By Mr. Royster): What was the conversation?

A. Mr. Wood came to me and asked me if I was Henry Hellbaum. I said, "Yes," and he stated it had been brought to his attention that I was soliciting, or words to that [306] effect, in the interests of the AF of L, and he said since the company was supposed to be neutral he wished I wouldn't do that any more.

Q. Did you make any reply to that?

A. I said, "O.K."

Q. Now, did you have a conversation with Charles Grube about the 9th of August, 1945?

A. Yes.

Mr. Hecht: May I ask this one question off the record, please?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Where did this conversation take place?

A. In the basement of "A" Building, I believe. It is down where they make Crystal White Soap.

Q. Who was present other than Mr. Grube and you?

A. Well, Ed Bopp was present, and one man

(Testimony of Henry Hellbaum.)

who has since been named to me as a man by the name of Cunha and Andy Matson, and a *name* by the name of Beck. I don't know his first name—and a fellow that we call Frenchie Valla, I think is his last name.

Q. Would you have any idea how to spell that last name? A. V-a-l-l-a, I believe. [307]

Q. What was that conversation, what you said to Grube, if you said anything, and what he said to you?

A. I asked Grube if it was so that he had told these three men, Valla, Beck, and Andy Matson, that he would send them home if they didn't take the AF of L buttons off their clothes? And he gave me an evasive answer, and he said that I couldn't come into his department any more. I said, "Is that so?" He said, "Yes, you hinder my men, you are hindering my men from working." I said, "I am not talking to your men, I am talking to you. I am asking you a straightforward question. I want to know, "Did you do this?" He said, "*Your* damned right I did; I am not beating about the bush to anyone about it."

Mr. Hecht: Mr. Royster, before I make my motion, I will avoid making my motion if you will ask Mr. Hellbaum who told him that Charlie Grube had done these things.

Mr. Royster: Well, I was not going to ask the witness that because I assumed that is purely hearsay.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Hearsay is admissible here. We have had even quintuple hearsay as far as——

Mr. Royster (interposing): You can ask him that question on your examination, Mr. Hecht.

Mr. Hecht: Then I move to strike that conversation with Grube because Mr. Hellbaum posed first the assumption that somebody had told him that Charlie Grube had said [308] something, whereupon he goes to Charlie Grube and inquires about the truth of it.

Trial Examiner Ruckel: It is what Mr. Grube says that is the crux of the matter. He said, to the effect, that he had told him that and would continue to do so, and words to that effect.

Isn't that the substance of Grube's answer as testified to by this witness?

Mr. Hecht: Well, I don't think it becomes material unless Grube actually did tell somebody else.

Trial Examiner Ruckel: On the contrary, I think it is immaterial what this witness heard. The only material thing is what Grube said.

Mr. Hecht: Well, it is same thing as if somebody were to ask me, "Have you swum the Golden Gate?" Actually I didn't swim the Golden Gate. I said, "Sure, and I will swim the Golden Gate any time I want."

Trial Examiner Ruckel: Well, rather it is this type of testimony: A foreman says that the Superintendent said to him that he was not going to permit any Union activity in the plant. Now, in fact, the Superintendent said no such thing, but the

(Testimony of Henry Hellbaum.)

statement in the mouth of the Foreman that the Superintendent did is intimidary even though in fact the Superintendent did not.

Mr. Hecht: Is this a hypothetical case we are referring [309] to, some Superintendent of the respondent?

Trial Examiner Ruckel: No, not of the respondent at all. I was merely trying to draw a parallel with this, where it is not the truth or falsity of the purported statement that is in question but the lower supervisor's statement that the higher supervisor did, even though the statement was false. In other words, the repetition of it in the mouth of the lower supervisor. Well, here we don't know that. Here, while the original testimony is hearsay, it becomes the answer of the foreman himself, becomes material, which was that, "Yes, I did say that in effect." Probably both parallels are a little unparalleled in places.

Mr. Hecht: Well, may I have a formal ruling, then, on the motion to strike?

Trial Examiner Ruckel: Motion denied.

Q. (By Mr. Royster): Do you know Mr. Duarte? A. Yes.

Q. Do you know Mr. Gonick? A. Yes.

Q. Did you see either of these men in the respondent's plant during the month of August?

A. I did.

Q. How frequently?

A. Oh, quite often. However, I don't know just

(Testimony of Henry Hellbaum.)

how frequently. It varied so but they were there a number of [310] times.

Q. And what, if anything, did you see them do?

A. I saw them distribute some literature.

Q. What kind of literature? I mean, was it AF of L literature?

A. No, it was definitely CIO literature. They were also collecting dues at times.

Q. Now, did you come to the plant on the 31st day of August? A. I believe I did.

Q. And about what time of day?

A. About 7:30. Perhaps a little earlier.

Q. Did you enter the plant at that time?

A. No, I did not.

Q. And why were you prevented from entering?

A. I was stopped at the gateway by a number of men.

Q. Can you name anyone who stopped you?

A. Paul Heide was closest to me.

Q. And did he speak to you? A. Yes.

Q. What did he say?

A. He said I couldn't go in there.

Q. Did he tell you why he couldn't go in?

A. No, he didn't. He just wanted to see my book, and I handed it to him, and he didn't look at it. He asked my [311] name and I told him, "Henry Hellbaum." And he said that—oh, he asked for a letter that someone had for me, and when they produced the letter he handed it to me.

Q. Do you have that letter with you?

A. No, I don't.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Mr. Examiner, at this point I will make a motion to strike the incident of August 31, his being stopped at the gate by Paul Heide, because there was no one representing the respondent present, and it cannot be in any way material to this proceeding.

Mr. Royster: You are too impatient, Mr. Hecht. If you would permit me to go on for a moment I will bring it to the respondent's knowledge.

Mr. Hecht: Oh, is that a preliminary question?

Q. (By Mr. Royster): Now, did you succeed in entering the plant on this day? A. Yes.

Q. And did you talk to Mr. Altman?

A. I did.

Q. And what was your conversation with Mr. Altman?

A. I asked Mr. Altman if he had given those men permission to keep us from entering their property, and he said, "Oh, that was immaterial, that was just a technicality."

Mr. Hecht: Just a moment.

I am going to move to strike this again. Mr. Altman [312] or no one else has control of the people outside the plant. Whatever Mr. Altman said to Mr. Hellbaum as to the rights of the parties outside of the premises of the respondent is not material to this proceeding, and I move to strike it.

Mr. Royster: Well, whether that be so or not the fact is, as the witness testified, that he was prevented from entering his place of employment where he had been coming for twelve years, and he brought

(Testimony of Henry Hellbaum.)

that to the attention of Mr. Altman, and this is what Mr. Altman told him.

Mr. Hecht: The respondent cannot be expected to police what happens outside of the plant, and I think the whole testimony is incompetent, irrelevant, and immaterial, and I move to strike it.

Mr. Ruckel: Well, did this happen outside the plant?

Mr. Hecht: It did.

Mr. Royster: It happened at the plant gate. The witness so testified.

The Witness: It happened inside, speaking to Mr. Altman. I was on the platform, the loading platform.

Trial Examiner Ruckel: But you were prevented from entering the plant gate?

The Witness: Yes.

Mr. Hecht: If he was prevented from entering the plant gate, what does that have to do with the respondent, if it was told to Mr. Altman or not. It is not material. [313]

Trial Examiner Ruckel: The respondent has control of the gate.

Mr. Hecht: Yes, but he was stopped outside. That is the testimony. We have no control of the sidewalks or of the street.

Trial Examiner Ruckel: Possibly, I don't get the picture.

Mr. Royster: As I understand, the testimony was he was prevented from entering the respondent's gate. I will put the question to him.

(Testimony of Henry Hellbaum.)

Mr. Hecht: If I understood the witness' testimony correctly, he testified that he was prevented from entering the premises. He was not prevented from entering——

Mr. Rowell (interposing): Mr. Hecht, the employers are fond of getting injunctions against people interfering at the gates.

Trial Examiner Ruckel: Will you clear that up?

Mr. Royster: Yes.

Q. (By Mr. Royster): You were stopped on the morning of August 31, Mr. Hellbaum?

A. That is right.

Q. Where were you stopped?

A. Just at the gate. The gate was wide open, and these men, I believe, were just inside the premises.

Trial Examiner Ruckel: And who were the men? [314]

A. Mr. Heide, and, oh—a number—one of the Business Agents was there; Gonick, I believe, and, oh, there must have been 15 or 20 men, many of whom I didn't know.

Q. (By Mr. Royster): Was Hack Gleichman there?

A. He was, but not right at that time.

Q. And it is your testimony that you were prevented from entering that gate?

A. That is right.

Q. By these men?

A. They told me I couldn't go in there.

(Testimony of Henry Hellbaum.)

Mr. Hecht: May I have that date again? August 31?

Mr. Royster: Yes.

Mr. Hecht: May I call your attention to the fact it is claimed that this man was removed from his employment on August 30.

Trial Examiner Ruckel: Yes. I suppose your contention is that he should have been permitted to enter because others were distributing literature and seeking support of the——

Mr. Royster (interposing): No, Mr. Examiner. He was an employee, as far as he knew. I better ask the witness.

Q. (By Mr. Royster): Why did you come to the plant on August 31?

A. Well, I came to report for work.

Q. Had you been informed that you were discharged, or that for any reason you were not expected at work that day? [315]

A. I had not.

Q. Had you worked the previous day?

A. I did.

Mr. Hecht: Again, Mr. Royster, may we have explained to us, since it is somewhat of a surprise to us, why it is claimed in this complaint that the man was discharged on August 30?

Mr. Royster: Well, I don't know that you are entitled to an explanation of that at this time, but I will say this: that it is based upon information given by the company, and the fact is that the last day that he worked was August 30.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Well, Mr. Examiner, I think that this is not within the issues. It is claimed in the complaint this man was discharged on August 30, 1945.

Mr. Royster: If for no other reason, the fact that the complaint alleges on or about August 30, 1945, why this is——

Mr. Hecht (interposing): I don't think it does that.

Mr. Royster: Oh, well, it does. You read it.

Mr. Hecht (examing document): That is right. It does claim "on and about."

My apology to you, sir.

Trial Examiner Ruckel: I am going to let it stand for what it is worth.

Q. (By Mr. Royster): You testified you spoke to Mr. Altman? [316] A. Yes, sir.

Q. And you testified as to what Mr. Altman said to you? A. Yes, sir.

Q. Now, what did you do then?

A. Stood around the gate for some time and conversed with others that were kept out at the same time, weren't permitted to enter.

Q. Did you have any further conversation with any of the ILWU representatives who were standing there?

A. Yes. A man came up to me and——

Q. (Interposing): Who?

A. I learned afterwards it was Hack Gleichman. I didn't know the man at that time.

Q. Very well.

(Testimony of Henry Hellbaum.)

A. And when he learned my name he says, "We know you. You are a Nazi," he says.

Q. Now, have you ever returned to the respondent's plant to work?

A. I went in the back gate; it was open. There was some general contractors working there and we always, or nearly always, when the gate was open, went in the back way. I worked in the boiler room. And I was escorted out by the foreman on the job.

Q. When did this take place?

A. During the time we were out at this meeting.

Q. Oh, this was prior to the time you were stopped at the gate? A. Later.

Q. You were stopped at the gate, Mr. Hellbaum, on the 31st of August, is that not so?

A. That is right.

Q. The continuous meeting——

A. (Interposing): Oh, yes. It was prior. I beg your pardon. It was prior. Sure it was.

Q. Well, now, will you tell me why you went into the plant during the time of this continuous meeting?

A. Well, when we went out to the meeting Mr. Sellers approached me, who is the Plant Engineer, and he asked me how much steam we were going to give them, and I told him, "Enough to man the fire pumps, or one boiler." And I came back to see if other boilers had been put on, that they were giving more steam.

Q. And did you see Mr. Sellers then?

A. No, I did not.

(Testimony of Henry Hellbaum.)

Q. And who did you see?

A. The Foreman in that department, Ernest Martinez.

Q. And you testified Martinez escorted you from the plant? A. That is right.

Mr. Royster: I think that is all.

Mr. Hecht: Mr. Examiner, I move to strike this incident [318] involving Sellers and Martinez. I do not know what bearing it has on the issues.

Trial Examiner Ruckel: Can you tell us what bearing it has?

Mr. Royster: I'm afraid I can't, Mr. Examiner.

Trial Examiner Ruckel: What?

Mr. Royster: I'm afraid I can't.

Mr. Rowell: That obviously came in by volunteer testimony when the witness misunderstood the question.

Mr. Royster: I hadn't planned to take that testimony from the witness. I just explored it to see what it was. I don't know what bearing it has on the case.

Mr. Hecht: Mr. Examiner, now from the testimony of the witness as to what occurred on August 31 it appears that there was something in the semblance of a picket line in or about the gate of the respondent. It is impossible for the respondent (I think the Examiner will take judicial notice of the fact) to get an injunction, mandatory or otherwise, against a picket line at a moment's notice. There is nothing that brings home this picket line that prevented Mr. Hellbaum from entering the plant to

(Testimony of Henry Hellbaum.)

Mr. Altman, and since there is no testimony of similar incidents occurring after August 30 I move to strike on the ground that it has no bearing whatsoever to the issues of this proceeding.

Trial Examiner Ruckel: Well, it seems pretty remote. [319]

Do you expect to tie it up with other similar——

Mr. Royster (interposing): Well, I will show, Mr. Examiner, by other witnesses, that there was a picket line, as Mr. Hecht characterizes it, at the gate of this plant for the purpose of selecting certain individuals to prevent them from entering the respondent's premises.

Mr. Hecht: How is that brought home to us?

Mr. Royster: That thereafter some of them were discharged, and some of them were not permitted to go to work at all any more. That was the time that these fellows found out that they had no jobs.

Trial Examiner Ruckel: You mean you expect to tie that in with the responsibility of the respondent?

Mr. Royster: Yes, I will.

Mr. Hecht: You will tie it up?

Mr. Royster: Possibly, not as to this individual but as to others, yes.

Mr. Hecht: Well, subject to a motion to strike if Mr. Royster fails to further connect it with the respondent, Mr. Examiner.

Trial Examiner Ruckel: Yes, sir.

Mr. Rowell: Well, now, wait a minute. Even that is going a little too far in the way of ruling.

(Testimony of Henry Hellbaum.)

Mr. Examiner. One of the defenses in this case interposed particularly by the CIO Union, which isn't supposed to be interposing any [320] defenses, is that these people were discharged, or were suspended by the Union, and then discharged by the Company because they went on strike. Now, this evidence all tends to show——

Mr. Hecht (interposing): Now, Mr. Examiner——

Mr. Rowell (interposing): Now, wait a minute. I haven't finished my statement.

This evidence all tends to show that in fact the reason was that they were wearing AF of L buttons, that they were active on behalf of the AF of L, and that was the true reason. Therefore, whether this is tied up directly to the company or not it is highly material to the case.

Mr. Hecht: If you will keep track of the dates——

Trial Examiner Ruckel (interposing): At least I will entertain the motion to strike.

Mr. Royster: That is what I understood your ruling to be, Mr. Examiner.

Mr. Hecht: In order to keep the record straight, may it be borne in mind and in memory that the work stoppage referred to by Mr. Edises and myself in the course of this proceeding was the work stoppage that took place from noon, July 31, to some time on August 3, 1945, and it has no reference to any work stoppage on or about August 30, 1945.

(Testimony of Henry Hellbaum.)

Mr. Rowell: True enough.

Mr. Royster: Certainly. [321]

Mr. Hecht: All right.

Mr. Royster: I never thought otherwise.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: No further questions.

Mr. Rowell: Yes, I think so.

Q. (By Mr. Rowell): Mr. Hellbaum, when you tried to get in the plant that day, August 31, was your book paid up in the CIO Union?

A. It was.

Mr. Rowell: I have nothing further.

Cross-Examination

Q. (By Mr. Hecht): Mr. Hellbaum, what was your employment at the respondent's plant?

A. Boiler maintenance man.

Q. Were you working at your job of boiler maintenance man on August 9? A. Yes.

Q. Were you working at your job of boiler maintenance man on August 8? A. Yes.

Q. In that case, what were you doing in the Toilet Articles Warehouse on that date, Mr. Hellbaum?

Mr. Royster: Objection, unless the company proposes to show that this man was discharged for failure to attend to his duties. [322]

Mr. Hecht: Oh, no.

Trial Examiner Ruckel: He may answer.

Mr. Royster: Merely cluttering up the record.

(Testimony of Henry Hellbaum.)

A. It was part of our work to attend to all traps throughout the plant, steam traps, as well as all pumps, the repair and maintenance of pumps throughout the plant, and we worked in all departments as far as repair work was concerned.

Q. (By Mr. Hecht): So that you were combining a bit of electioneering together with your job of attending to traps?

A. Well, I wouldn't say that.

Q. Wasn't it your testimony that you were stopped by Mr. Wood and told to—within distance of Ann Nicoletti, and told to do no more electioneering because the company was taking a neutral position?

A. I was in the warehouse for the purpose of buying a few toilet articles at that time.

Q. So that you were doing no electioneering at that time? A. I was not.

Q. You were not doing any electioneering, so that without any provocation whatsoever Mr. Wood came to you and said, "You must not do any more electioneering?"

Mr. Rowell: Object to the form of the question, "Without any provocation whatsoever." That doesn't——

Q. (By Mr. Hecht): Let us say without you being seen or heard by Mr. Wood doing any electioneering he voluntarily [323] came and made that statement to you?

Mr. Rowell: That doesn't represent the testi-

(Testimony of Henry Hellbaum.)

mony of the witness. Object to the form of the question.

Trial Examiner Ruckel: Objection sustained. I think it is argumentative.

Q. (By Mr. Hecht): Well, why did Mr. Wood say that to you?

Mr. Rowell: He doesn't know. Or do you know?

Q. (By Mr. Hecht): If you know.

A. I don't know.

Q. So your testimony is out of a clear blue sky Mr. Wood told you to stop electioneering?

Mr. Rowell: That is objected to. It is not the testimony of the witness.

Mr. Edises: It is cross-examination.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Hecht): On August 9 what were you doing in the basement where Charlie Grube is the foreman?

A. I went to look after some traps.

Q. And while combining your duties of inspecting steam traps you engaged in this conversation with Grube?

A. It was later in the day that I engaged——

Q. (Interposing): What were you doing there later in the day? Were you on company time then?

A. I had been asked to go down. I was appointed as one of the committee. [324]

Q. On company time?

Mr. Rowell: Well, now, Mr. Examiner, that has gone on too far. Mr. Royster's objection was a good one, and furthermore, unless Mr. Hecht intends to

(Testimony of Henry Hellbaum.)

show that no electioneering was allowed by anybody on company time, and none of the employees were allowed to leave their jobs for conversational purposes of any kind, it is wholly immaterial. Everybody in the plant was doing that.

Mr. Hecht: I submit it is material, Mr. Examiner.

Trial Examiner Ruckel: You may answer.

A. I did do that on company time.

Q. (By Mr. Hecht): Isn't it a fact that you were addressing all the men who were in Charlie Grube's department, that you took six men from their work to address them on behalf of the AF of L? A. I did not.

Q. How many men did you take off their work?

A. I didn't take any men off their work.

Q. You addressed them while they were working, did you not?

A. When I had gone through that morning three of the men saw me go by the door, and they stopped me and told me that Chuck Grube had said this to them.

Q. Yes.

A. I told them when I had more time I would look into [325] it. There were often times when we weren't too busy in our jobs, and other times that we were very busy, and at a leisure time I looked up Chuck Grube.

Q. And you didn't look up anybody else but Charlie Grube at that time? You merely went to

(Testimony of Henry Hellbaum.)

make this inquiry from Charlie Grube, is that correct? A. That is right.

Q. You did not engage in any other electioneering at that time? A. I did not.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I have a few questions.

Q. (By Mr. Edises): Have you got your ILWU dues book with you, Mr. Hellbaum?

A. No, I don't happen to have. I am sorry.

Q. Do you have it available somewhere?

A. I do have it at home.

Q. Will you be good enough to bring it with you tomorrow?

Mr. Rowell: Well, if he is coming back. Couldn't he mail it to the Board in case it is material? I don't know, but there is a process for him to get it here without personally appearing.

Mr. Edises: I don't care how it is done.

Mr. Royster: Do you want to see his dues book?

Mr. Edises: Yes.

Mr. Royster: I will ask the witness now if he will mail it to me so that I may show it to you.

The Witness: I will, yes.

Mr. Edises: All right.

Mr. Hecht: Mr. Edises, I have one more question of this witness.

Mr. Edises: Go ahead.

Q. (By Mr. Hecht): Mr. Hellbaum, did you attend the so-called trial—that is what it has been

(Testimony of Henry Hellbaum.)

referred to—I don't know whether it was one or not—before a committee of the ILWU on December 17, 1945?

A. I did not attend the trial. I was present before the trial.

Q. You were present before the trial?

A. Yes.

Q. And you were asked whether certain charges made against you were true or not?

A. We were given a sheet of paper to read, yes.

Q. And you were there supposedly to stand trial? A. That is right.

Q. And you walked out? A. That is right.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Hellbaum, did you take part in the [327] meeting of July 30?

A. Yes.

Q. I will read you Paragraph 2. It states: "Motion by Thompson that we withdraw from the C.I.O. and International Longshoremen's & Warehousemen's Union, District 1, Local 6, form an independent union, and seek affiliation with another International. Motion seconded. Vote carried unanimously, in favor 205, opposed none."

Did you concur in that resolution?

A. Perhaps. I don't remember.

Q. You were present at the meeting?

A. I believe I was, yes.

Q. And you went along with the resolutions that were made, did you not?

(Testimony of Henry Hellbaum.)

A. I don't always take part in resolutions, seldom do, either way.

Q. Well, but did you abstain from voting on that?

A. I probably did, but I wouldn't say for sure.

Q. You mean you probably voted?

A. I probably abstained from voting.

Trial Examiner Ruckel: Probably abstained.

Q. (By Mr. Edises): You probably abstained from voting?

A. I seldom vote, I just stated.

Q. I see. Did you dissent from that resolution?

A. I did not. [328]

Q. You participated in the work stoppage, did you not? A. Yes.

Q. Now, Paragraph 3 reads: "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously.

Did you concur in that resolution?

A. I did.

Q. Now, you were aware, were you not, that these telegrams, which are Board's Exhibits 5 and 6, were agreed to be sent to the Union and to the company?

A. (Examining documents) I don't seem to remember much about, or anything about the telegrams.

Q. Do you recall the discussion of sending such telegram?

(Testimony of Henry Hellbaum.)

A. Just vaguely in my mind, that there was a discussion about telegrams.

Q. Yes. Well, Mr. Hellbaum, did you in any way oppose any of the actions taken at that meeting? A. I don't believe I did.

Q. When did you join the AF of L? Did you say when?

A. Oh, I don't remember exactly. It was just prior to these meetings.

Q. When did you join the Employees Welfare Association?

A. Well, rather we joined the Welfare Association first, the [329] first meeting, perhaps. I don't even remember for sure.

Q. The July 30 meeting was the first meeting of the Employees Welfare Association, was it not?

A. As far as I know.

Q. Had you been in the habit of attending your union meetings while you were an I.L.W.U. member?

A. We had the privilege of attending the machinists' meeting if we preferred, and usually we went there, all the maintenance men.

Q. But you were a member of the ILWU?

A. That is right.

Q. Did you know that the ILWU had adopted a no-strike pledge during the war?

A. No, I can't say that I was aware of that.

Q. Let me see if I understand you correctly, Mr. Hellbaum. You understand now that you are on the witness stand under oath?

(Testimony of Henry Hellbaum.)

A. That is right.

Q. And do I understand you to say that you did not know that the International Longshoremen's & Warehousemen's Union had taken a pledge, adopted a pledge against striking during the war?

A. I repeat that I don't believe I knew that. I never read their literature.

Q. Is your recollection of the other things that you have [330] testified to about as good as your recollection of this later incident——

Mr. Rowell (interposing): Well, now, that is a favorite question of trial lawyers.

Mr. Edises: I submit I should at least have the courtesy of being permitted to finish my question before I am interrupted.

Mr. Rowel: The question is so familiar to trial lawyers.

Trial Examiner Ruckel: Just a moment. Let counsel finish his question.

Mr. Edises: Mr. Examiner, may I be permitted to have the privilege of finishing my question?

Trial Examiner Ruckel: I said finish your question.

Mr. Edises: Thank you. Now, I would like to have the question read, please, without interruption.

(The question referred to was read by the reporter.)

Mr. Rowell: That is objected to, Mr. Examiner.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Finish your question. Did you finish your question?

Mr. Edises: That is the question. In other words, it goes to his credibility.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Did you ever hear of a newspaper called the ILWU "Dispatcher"? [331]

A. I have.

Q. As a union member you received a subscription to that, did you not? A. I did.

Q. Did you read the newspaper?

A. I did not.

Q. You did not read it. Do you know who the officers of the ILWU were at that time?

A. I knew some of them.

Q. Do you know who the President was?

A. I believe his name is Lynden.

Q. Arthur Lyndep?

A. I don't know him first name.

Q. When Mr. Gleichman called you a Nazi, did you deny that?

Mr. Rowell: That is objected to. That is wholly immaterial.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I submit it was asked on direct, and besides, Mr. Examiner, it is a well-known principle of law that if a witness is accused of being something and makes no immediate denial, there is an inference to be drawn as to the accuracy of the statement. It is true in negligence cases. I see no

(Testimony of Henry Hellbaum.)

reason why it shouldn't be true in a proceeding like this. [332]

Mr. Rowell: He was not asked that question on direct. He was asked what the conversations were.

Trial Examiner Ruckel: Let's ask if there was any further conversation along that line.

Q. (By Mr. Edises): After Mr. Gleichman accused you of being a Nazi, was there any further conversation?

The Witness: Will you repeat that, please?

Mr. Edises: Will you read the question, please?

(The question referred to was read by the reporter.)

A. Yes.

Q. (By Mr. Edises): Did you deny the accusation? A. I did not.

Mr. Edises: That is all.

Mr. Hecht: Mr. Examiner, I don't recall this Nazi name-calling incident, and, as I recall the testimony, when Mr. Gleichman was talking with Mr. Hellbaum there was nobody representative of the company present.

Trial Examiner Ruckel: That is correct.

Mr. Hecht: So I move to strike it.

Trial Examiner Ruckel: Motion denied. Certainly it doesn't show the company to have been any part of the conversation.

Mr. Hecht: It is in there for whatever it is worth then?

Trial Examiner Ruckel: That is correct. For whatever it [333] is worth.

Mr. Rowell: Well, I submit it isn't worth very much.

Trial Examiner Ruckel: Any further questions of the witness? (No response.)

You have made some reference, I think, to the collection of dues when Mr. Royster was questioning you.

Do you recall what that was?

The Witness: (Affirmative nod.)

Trial Examiner Ruckel: What was your testimony on that?

The Witness: I believe I said I did collect some dues.

Trial Examiner Ruckel: That is while you were a Steward?

The Witness: Well, I was one of the committee to represent the employees in the plant after the nine were suspended.

Trial Examiner Ruckel: Well, that is dues in the AF of L, isn't that correct?

The Witness: That is right.

Trial Examiner Ruckel: Did you collect dues in the plant?

The Witness: Yes. I believe that there was some money brought to me.

Trial Examiner Ruckel: Is there going to be any evidence on the practice, if there was any such practice, [334] of Stewards for the ILWU collecting dues in the plant?

Mr. Edises: Well, I believe that——

Trial Examiner Ruckel (interposing): It is not provided for in the contract, but it is provided they

(Testimony of Henry Hellbaum.)

shall take time off to handle grievances and for one other purpose. It says nothing about the collection of dues, but I wondered in practice if that was——

Mr. Edises (interposing): I believe that that was the practice, Mr. Examiner. In fact, this witness testified that he had seen Mr. Gonick and Mr. Duarte collecting dues.

Trial Examiner Ruckel: I think that is what I had reference to when I asked him what his testimony was.

Mr. Edises: Yes. And I think that was the practice. We can so stipulate if it is material.

Trial Examiner Ruckel: Well, not necessarily now, but at some time I would like to know what the situation was.

The Witness: It was definitely the practice.

Trial Examiner Ruckel: It might have been that the ILWU had certain prerogatives which grew up by reason of a closed shop contract that are not set forth in the contract. If that was one of them I would like to know it.

Mr Edises: Well, we can stiplate to that. As a matter of fact, I propose a stipulation——

Trial Examiner Ruckel (interposing): If there are any others, I would like to know. [335]

Mr. Edises: I propose to stipulate that the contracting union has always engaged in the practice of collecting dues in the plant.

That is your recollection, is it not, Mr. Hellbaum?

The Witness: That is right.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: And would the same thing go to soliciting new members?

Mr. Edises: It has always been done. The company, I think, hasn't ever denied that privilege to the union. Of course, it was not so much a matter of soliciting as it was of contacting a new employee.

Trial Examiner Ruckel: That is right.

Mr. Edises: And telling him that he was required to join the union.

Trial Examiner Ruckel: By force of the closed shop contract.

Mr. Edises: The contract, but there has never been any objection to that by the company.

Trial Examiner Ruckel: I had assumed not. I was just wondering what the practice was.

Well, may that be stipulated?

Mr. Rowell: We will join in the stipulation on both phases.

Mr. Royster: The Board will so stipulate.

Trial Examiner Ruckel: Any further questions of this [336] witness?

Mr. Hecht: May I ask a question now, or do you gentlemen have further questions?

Mr. Royster: I have nothing.

Mr. Rowell: I have one question, but you go ahead.

Mr. Hecht: I am rather confused by Mr. Hellbaum's testimony.

Q. (By Mr. Hecht): Is it your testimony, Mr.

(Testimony of Henry Hellbaum.)

Hellbaum, that after August 30 you came into the plant to collect AF of L dues?

A. That was after we had the meeting.

Mr. Royster: That was after you were not permitted to enter the plant?

The Witness: No, I didn't enter the plant.

Q. (By Mr. Hecht): You didn't go back to the plant then? A. No.

Mr. Hecht: I just wanted to be clear on that.

Mr. Edises: Now I am not clear.

Q. (By Mr. Edises): You were collecting AF of L dues after the meeting at which the withdrawal resolution was passed; is that correct?

A. That is right.

Redirect Examination

By Mr. Rowell:

Q. At this, what has been referred to as the so-called trial of December 17, the Union trial, you didn't plead guilty, or not guilty, or anything is that right?

Mr. Edises: Well, now, just a minute. I want to object to that as leading and suggestive.

Mr. Rowell: He testified to it before.

Mr. Edises: He did not.

Trial Examiner Ruckel: If he did, why ask him again.

Mr. Rowel: Well, that is just preliminary.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: All right.

(Testimony of Henry Hellbaum.)

Q. (By Mr. Rowell): Did you plead at that so-called trial? A. I did not.

Q. What did you do? Did you stand trial?

A. No.

Q. Was there a statement read by you or on your behalf as to the reasons why you were not standing trial? A. There was.

Mr. Rowell: Will you mark this for identification?

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 1 for identification.)

Q. (By Mr. Rowell): I show you a paper which has been marked as Petitioner's Exhibit 1 for identification and ask you to read it and state whether or not that was the statement which was read on your behalf at the time you walked out, or didn't stand trial, on December 17, 1945? [338]

A. (Examining document.)

Trial Examiner Ruckel: Do you have to read it all?

The Witness: I believe that this is the letter.

Mr. Rowell: I will offer it in evidence, Mr. Examiner.

Mr. Edises: I will object until there is some showing of what relevancy and materiality is.

Mr. Rowell: All I do is complete the story that is brought out by Mr. Hecht, Mr. Examiner. That is all it is.

Trial Examiner Ruckel: Well, we are not inter-

(Testimony of Henry Hellbaum.)

ested in any phase of the story unless it involves the Respondent's knowledge of it.

Mr. Hecht: Well, Mr. Rowell, in my questions, I submit to you, and I stipulate further that if I fail to show by my witnesses that we had knowledge of the fact that this man appeared at the trial and refused to stand trial, if I don't show that you may move to strike those questions and those answers.

Mr. Rowell: Likewise, the reason why he refused to stand trial is of some materiality.

Trial Examiner Ruckel: It is not material as far as the Respondent is concerned. It might be material so far as the two unions are concerned.

Mr. Rowell: Well, then, the union is putting in defenses here that——

Trial Examiner Ruckel (interposing): The Union isn't [339] putting in any defense.

Mr. Rowell: I know, but it is supporting the defense of the company to the extent that these people were discharged because of strike action.

Trial Examiner Ruckel: Well, the company has indicated that they had some knowledge of the trial, but I thought we threshed that out yesterday. The materiality could only be the fact of a trial, and the Respondent's knowedge, and not the merits of the trial, or whether it was a fair trial or not, or not any statements or peadings that took place at the trial.

Mr. Rowell: If Mr. Edises is going to offer those records of that trial——

Mr. Edises (interposing): Well, I submit that

(Testimony of Henry Hellbaum.)

I was not aware that Mr. Rowell had the talent of being a mind reader.

Trial Examiner Ruckel: He has not yet, anyway. The exhibit is rejected.

Mr. Rowell: All right. May I have it retained as marked for identification?

Trial Examiner Ruckel: That is right.

Mr. Rowell: And I will renew the offer if Mr. Edises makes a similar offer.

Trial Examiner Ruckel: Put it in a rejected exhibit file.

(Thereupon, the document heretofore marked Petitioner's Exhibit No. 1 for identification, was rejected.) [340]

Mr. Rowell: Mr. Hellbaum, let me ask one more question on this matter of pleading which you did at that trial.

Are you certain, as a matter of fact, do you know that you didn't plead guilty, or do you know that you plead not guilty, or nothing at all? Do you remember?

A. I plead "Not guilty."

Mr. Rowell: Yes, that is all.

Recross Examination

By Mr. Edises:

Q. You say that you entered a plea of "Not Guilty" at the trial, is that right?

A. I did.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

Mr. Hecht: No further questions.

(Witness excused.)

Mr. Royster: I am ready to call another witness.

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

Mr. Edises: Oh, one moment, Mr. Examiner. Is Mr. Thompson here?

Mr. Royster: Yes.

Mr. Edises: May we have Mr. Thompson take the stand for just a moment?

Trial Examiner Ruckel: Yes. Mr. Thompson.

EDWARD H. THOMPSON

called as a witness by and on behalf of the Trial Examiner, being first duly sworn, was examined and testified as follows:

Mr. Edises: Will it be stipulated that this is cross examination?

Mr. Royster: I don't see why I should do it again, Mr. Edises. We had a stipulation whereby it was agreed it was unnecessary to call Mr. Thompson.

Trial Examiner Ruckel: I will take the witness over.

(Testimony of Edward H. Thompson.)

Direct Examination

By Trial Examiner Ruckel:

Q. Mr. Thompson, what is your first name?

A. Edward H. Thompson.

Q. Where do you live?

A. 1034 Virginia Street, Berkeley.

Trial Examiner Ruckel: Cross examination for the Board?

Mr. Royster: No questions.

Trial Examiner Ruckel: The Union?

Cross Examination

By Mr. Edises:

Q. Mr. Thompson, I show you Intervener's Exhibit No. 2 which has been identified as the minutes of the meeting of July 30, concerning which there has been testimony, and at the foot of these minutes appears "E. H. Thompson, Recording Secretary." [342] Does that refer to yourself?

A. Yes, I was the Recording Secretary.

Q. You were the person who took these minutes?

A. Yes.

Q. Will you glance over them and tell me whether those minutes comport with your recollection, whether they are, so far as they go, a true and correct account of what took place at the meeting?

A. (Examining document): Yes, I believe these are.

(Testimony of Edward H. Thompson.)

Q. And the same question in regard to the minutes of the meeting of July 31 and August 2?

A. (Examining documents): Yes, I think these are correct. On this July 31—on this August 2 meeting, though, I don't think I was Recording Secretary on there. I probably was Recording Secretary—I am not quite certain whether I was. That is when we made a change.

Q. In any event, the contents seem to you to be accurate?

A. Yes, the contents seem to be. I don't know whether they are word for word, but they are——

Q. I see. Now, in the minutes of July 30 there appears this statement: "William Stolba, L. Olsen, Dave Luchsinger, Wm. Sherman, E. H. Thompson following general meeting visited an attorney for legal reasons as to the best way to complete severing relations with I.L.W.U. 1-6."

Who was the attorney you visited in that connection? [343]

A. I can't think of his name right off at present. I got his name at home, though. I could mail it in to the Board, if it is necessary.

Q. Is he an attorney at law practicing in Oakland, California?

A. Yes, he is an attorney in Oakland.

Q. And what advice did he give you?

A. He gave us the advice to send that telegram.

Q. Sending the telegram? A. Yes.

Q. And those telegrams are——

A. (Interposing): He drafted the telegrams.

(Testimony of Edward H. Thompson.)

Those are the telegrams what these others read here.

Q. Those which are in evidence as Board's Exhibits 5 and 6, is that correct? A. Yes.

Q. The question you asked of him was as to the appropriate legal method whereby these employees could sever their relations with ILWU, Local 6, is that correct?

A. That is right. And they asked numerous other questions. I don't remember or recall all the questions that they asked. They spent quite a bit of time with him, and he also started drafting a charter, or by-laws for a new Employees Welfare Association.

Mr. Edises: I see. That is all. [344]

Q. (By Mr. Rowell): In other words——

Mr. Edises (interposing): I am sorry. Just one other question.

Q. (By Mr. Edises): Were you aware of the ILWU's no-strike pledge? A. Yes, I was.

Mr. Edises: You were.

Q. (By Mr. Rowell): In other words, Mr. Thompson, when you consulted this attorney you were consulting him with reference to the appropriate legal method of changing your affiliation from the ILWU to a new labor organization, or a different labor organization?

A. That is correct, to the Employees Welfare Association, to the independent union.

Mr. Rowell: Yes.

(Testimony of Edward H. Thompson.)

Trial Examiner Ruckel: Questions by the Respondent?

Mr. Hecht: No questions, Mr. Examiner.

Mr. Rowell: On the record I would like to state to Mr. Edises that the attorney contacted by Mr. Thompson and others on the occasion you requested information about was George Gelder, G-e-l-d-e-r, in the Easton Building, 13th and Broadway, Oakland.

Trial Examiner Rucker: Is that correct?

The Witness: That is correct. I remember his name now that somebody mentions it. [345]

Trial Examiner Ruckel: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess until 9:30.

(Whereupon, at 5:15 p. m. an adjournment was taken to Thursday, February 7, 1946, at 9:30 a. m.) [346]

Thursday, February 7, 1946

(Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m.)

Proceedings

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Mr. Examiner, during the cross-examination of witness Henry Hellbaum yesterday, counsel for the intervener requested that the witness supply him with his union dues book, that is, his ILWU union dues book.

I would like the record to show that that book was delivered to counsel for the intervener this morning.

Do you agree, Mr. Edises?

Mr. Edises: Certainly.

Mr. Royster: The Board calls Kay Norris.

KAY NORRIS,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, Mrs. Norris, please.

A. Kay Norris, 2342 17th Avenue, Oakland, California.

Q. And how long were you employed by the respondent?

A. I first went to work for Colgate's in 1933,

(Testimony of Kay Norris.)

and I quit and went to work again in 1940, and up to September 1st when I was suspended.

Q. That is September 1, 1945? [350]

A. 1945.

Q. Were you a member of the HLWU?

A. I was.

Q. And for what period of time?

A. June 3, 1941, up to the time I was suspended.

Q. Now, Mrs. Norris, I show you Board's Exhibit 4 and ask if you have seen that before?

A. (Examining document): I have.

Q. And will you tell us when you saw it?

A. I saw it on the—I believe it was the 30th of July.

Q. 1945?

A. 1945. Ed Bopp threw it on my lap.

Q. Where were you at the time?

A. I was working in the Toilet Goods Department on the Cashmere Bouquet machine. Mr. Gonick come along after him and told me if I attended that meeting I would get into serious trouble.

Trial Examiner Ruckel: Who is Mr. Gonick?

Q. (By Mr. Royster): You didn't attend the meeting, did you?

Trial Examiner Ruckel: Who is Mr. Gonick?

The Witness: He is the Business Agent.

A. I did not attend the meeting because I had an appointment with the doctor.

Mr. Edises: Which meeting are we speaking of?

Mr. Royster: This is the July 30 meeting.

Mr. Hecht: July 30 meeting.

(Testimony of Kay Norris.)

Q. (By Mr. Royster): Did you sign an application for membership card in the AF of L?

Mr. Hecht: Mr. Examiner, before we go any farther (of course, apologizing at the outset, Mr. Royster), I make a motion to strike the testimony as to having Exhibit 4 thrown in her lap and the remarks of Gonick, there being no one representing the company present at the time and place.

Trial Examiner Ruckel: There was no foreman or supervisor present on that occasion, was there?

The Witness: There was a foreman about five feet away from me; Albert Zulaica.

Mr. Rowell: Now, Mr. Examiner, if you are contemplating ruling on that objection favorably, I would like to be heard for just a moment.

Trial Examiner Ruckel: I haven't ruled. I am still asking the witness.

Mr. Hecht: Mr. Examiner, the answer that Albert Zulaica was a foreman, Mr. Zulaica was on the stand yesterday. He had no position——

Mr. Royster (interposing): I believe he may have been a leaderman. There is no contention that Zulaica was a representative of the company.

Trial Examiner Ruckel I think it is perfectly clear [352] that the respondent isn't bound by that particular conversation, but the motion to strike is denied. It is the general picture that we are trying to get.

Q. (By Mr. Royster): I believe my question was: Did you sign an application for membership card in the AF of L?

A. I did, on the third of August.

(Testimony of Kay Norris.)

Q. And again, of course, you mean August, 1945? A. Yes, sir.

Q. Now, Mrs. Norris, you did not work from noon July 31, until the morning of August 3, did you? A. I did not.

Q. You refrained from working, as did most of the employees? A. I did.

Q. Did you work in the month of August, starting with August 3? A. I did.

Q. Did you see Hack Gleichman during that month? A. I did, numerous times.

Q. Where did you see him?

A. I saw him out on the platform, in the Toilet Goods Department. I saw him talking with Mr. Wood out in the yard. I saw him talking to Mr. Altman numerous times, and Mr. Railey.

Q. Did you overhear any conversation that Mr. Gleichman may have had with anyone in the Toilet Department? [353]

A. Yes. He went around to numerous employees on our floor and warned them to take their buttons off or they would be suspended as—they would be in the same predicament as the Stewards were.

Q. Did you hear him say that?

A. I heard him.

Q. What buttons do you mean?

A. The AF of L buttons, Chemical Workers Union.

Q. Did you wear an AF of L button at work?

A. I did.

(Testimony of Kay Norris.)

Q. Did you wear it prominently on your clothes?

A. I wore it at all times.

Q. Did you pass out any AF of L literature?

A. I did.

Q. That was in the plant?

A. In the plant.

Q. Did you pass out AF of L buttons?

A. I did, in the plant.

Q. I show you a writing, Mrs. Norris, of two mimeographed sheets and ask you if you can identify it. A. Yes.

Mr. Royster: Will the reporter mark this as Board's Exhibit 12 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 12 for identification.) [354]

Q. (By Mr. Royster): Where have you seen Board's Exhibit 12 for identification before?

A. I came to work the next morning and they were distributed all throughout the women's eating room.

Mr. Hecht: What does she mean by "next morning"?

Q. (By Mr. Royster): What do you mean by "next morning," Mrs. Norris?

A. Well, I first saw it on the time clock.

Q. In what building?

A. Well, I don't know what building I am in. I am on the "A" floor.

Mr. Hecht: Mr. Royster, just a moment. May we have the date when she saw it?

(Testimony of Kay Norris.)

Mr. Royster: I am trying to fix that, Mr. Hecht.

Mr. Hecht: All right, thank you.

Q. (By Mr. Royster): When you say you saw it at the time clock, do you mean on a bulletin board there? A. Yes, sir.

Q. And it was on the bulletin board in the building in which you worked? A. Yes, it was.

Q. And what department did you work in?

A. Well, I work in the Toilet Goods Department but the time clock is not on my floor.

Q. But it is in the same building? [355]

A. It is in the same building.

Mr. Royster: Well, can we discover in what building the Toilet Goods Department is?

Mr. Hecht: That is the "L" Building.

Q. (By Mr. Royster): In the "L" Building?

A. The "L" Building.

Q. Now, when did you see this on the bulletin board there, Mrs. Norris?

A. I believe it was on the 22nd.

Q. Of what? A. Of August.

Q. Last? A. Yes.

Q. Did you see it any place other than the bulletin board? A. And upstairs on the table.

Q. Did you see anyone distribute any?

A. No, I did not.

Mr. Royster: I will offer Board's Exhibit 12 for identification in evidence.

Mr. Hecht: No objection.

Mr. Edises: No objection.

Mr. Rowell: No objection.

(Testimony of Kay Norris.)

Trial Examiner Ruckel: It will be received.

(Thereupon, the document heretofore marked Board's Exhibit 12 for identification was received in evidence.) [356]

Trial Examiner Ruckel: May I inquire: What do you claim for this testimony, though, that Gleichman, I believe it was, or someone else, threw this circular, Board's Exhibit 4, in her lap, and that Board's Exhibit 12 was circulated in the plant?

Mr. Royster: Board's Exhibit 12, Mr. Examiner, states under Item No. 7 that "Any Peet's employee reported as trying to get people to bolt the CIO and join the AF of L or wearing an AFL button, will be taken off the job."

The Board contends that the respondent, by virtue of that exhibit, was placed on notice as to the intent of the CIO Union with respect to the employees who took part in any AF of L activity. The Board further contends that this casts a revealing light upon the motivation of the CIO in securing subsequently the discharge of these employees.

Mr. Hecht: May I point out, Mr. Examiner, that although the witness has testified that it was on the bulletin board, that mere fact does not bring it home to the respondent.

Mr. Royster: Well, you can so contend.

Trial Examiner Ruckel: May I inquire, are these bulletin boards maintained by the Union or are they company bulletin boards?

Mr. Royster: I don't know.

(Testimony of Kay Norris.)

Mr. Hecht: They are maintained for the use of anyone [357] that wants to put up any notice, as far as I know, Mr. Examiner.

Trial Examiner Ruckel: Well, let that be developed later.

How about this notice being placed in her lap, you mean the same effect is claimed for that?

Mr. Royster: The same effect is claimed for that, that these notices, warning notices, were distributed very generally throughout the plant (I think the evidence shows that) that they must inescapably have come to the notice of the company.

Mr. Hecht: I object to the "must inescapably," Mr. Examiner.

Mr. Royster: He asked for my contention and I am giving it.

Trial Examiner Ruckel: That is his contention.

Mr. Royster: And that it shows again that the ILWU was determined to secure the discharge of persons who attended this meeting, and it puts the company on notice as to that intention.

Trial Examiner Ruckel: You are not contending that the company respondent favored one above the other in the solicitation of support for the organization?

Mr. Royster: Yes, I do contend that.

Trial Examiner Ruckel: This witness testified, and so [358] did one yesterday, that they wore their AF of L buttons freely in the plant, in fact, the one yesterday testified that he obtained members for the AF of L in the plant.

(Testimony of Kay Norris.)

Mr. Royster: Oh, yes, that is correct, Mr. Examiner. I claim that they paid a bitter price for doing so.

Trial Examiner Ruckel: Well, this goes principally to the question of notice rather than as violation of Section 8(1).

Mr. Royster: Yes, I think that is so.

Q. (By Mr. Royster): Mrs. Norris, did you have a conversation——

Mr. Hecht (interposing): Mr. Examiner, may I say this: Since Mr. Royster has already adverted to Sections of the Exhibit 12 it is to be noted too that there are other complaints made against the discharge, the removed Stewards, in that Exhibit 12 in addition to any question of AF of L affiliation, so the exhibit is offered as a whole, I think.

Mr. Royster: Oh, yes.

Trial Examiner Ruckel: Yes.

Q. (By Mr. Royster): Did you have a conversation about August 30, 1945, with Mr. Gleichman?

A. I did.

Q. And where did this conversation take place?

A. It took place in the Toilet Goods Department while I was working. [359]

Q. And who was present during this conversation?

A. All of the employees were working at the time, and one of the foremen.

Q. Pardon me?

A. And one of the foremen, leaderman.

(Testimony of Kay Norris.)

Q. A leaderman? A. Yes.

Q. Not the regular foreman of the department?

A. No, a leaderman.

Q. And what was the conversation?

A. He came up and tapped me on the back and said, "Let me see your book."

Q. And what book did he have reference to?

A. He meant my union book.

Q. And what union? A. In the ILWU.

Q. All right.

A. And I told him I didn't know who he was, and he said, "Well, you know this man, George Squires."

Q. George Squires. He is an employee of the respondent, is he not? A. Yes, he is.

Q. At that time was he not a steward of the ILWU? A. Yes, he was picked out.

Q. Well, he was a Steward of the ILWU at that time, wasn't [360] he?

A. ILWU. And he said, "Well, then, show him your book." I said, "No," because he was appointed by the CIO and not elected by the company.

Q. You refused to show your book?

A. So I refused to show my book. So Mr. Gleichman said, "Show your book to me. I represent ILWU." I told him if he would show me credentials of any kind I would show him, so he gave me his card, and I showed him my book.

Q. Now, after you showed him the book, was there any further conversation with Mr. Gleichman? A. Yes.

(Testimony of Kay Norris.)

Q. And what was that conversation?

A. He told me that I was campaigning in there, that I was going to get in trouble, that I was nothing but a Nazi leader. He asked me to go see a certain picture, and said that that is just exactly what I am. I learned later that this certain picture was a Nazi picture.

Trial Examiner Ruckel: You mean an "anti-Nazi" picture, I suppose?

The Witness: Yes.

Q. (By Mr. Royster): Was there any mention of union buttons?

A. He told me to take my union button off.

Q. What union button were you wearing?

A. My AF of L union button off, and I wouldn't do it. And [361] he said, "You better take that button off." I told him I bought the button, and if he bought his pants he paid for them, and I bought my button, and when he dropped his pants I dropped my button.

Q. Now, is Mr. Mason a foreman of your department? A. He was; he is.

Q. Where was he when this conversation took place?

A. He was on the floor, but he was too far away to hear me.

Q. Could he see that you were in conversation with these men?

A. He could see, yes. He was——

Mr. Hecht (interposing): I object to the conclusion that he could see, Mr. Examiner. It is pos-

(Testimony of Kay Norris.)

sible that he might have been able to see, but no one here can testify that he could see.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Royster): Well, could you see Foreman Mason?

A. I could. He was in plain sight.

Q. Was his face turned in your direction?

A. Right towards me.

Mr. Hecht: That is pretty leading, Mr. Examiner, but we will let it go.

Q. (By Mr. Royster): Now, on August 31 did you have a further conversation with Mr. Gleichman? A. I did. [362]

Q. And where did this conversation take place?

A. At the very same place.

Q. And again who was present?

A. All the employees, and this leaderman was just a few feet away from me.

Q. Was Mr. Mason there?

A. Mr. Mason was standing outside his office door.

Q. Would you say that Mr. Mason was too far away to hear any conversation? A. He was.

Q. Could you see Mr. Mason?

A. I could see Mr. Mason.

Q. Which way was Mr. Mason's face turned?

A. Well, he would be out that way and I am here (indicating).

Q. I mean with reference to where you were standing? A. What?

Q. With reference to where you were standing, which way was Mr. Mason's face turned?

(Testimony of Kay Norris.)

A. Well, he was looking toward me.

Mr. Edises: Mr. Examiner, I want to move to strike the testimony as to what Mr. Mason was doing subsequent to the witness' testimony that he was too far away to hear her. She has obviously disqualified him as a competent witness to this conversation.

Mr. Royster: Well, now, Mr. Examiner, it may develop [363] that what Mr. Mason could have seen at this time is a point.

Trial Examiner Ruckel: Well, it may stand.

Q. (By Mr. Royster): Now, what was your conversation with Mr. Gleichman on this occasion, Mrs. Norris?

A. I saw Mr. Gleichman coming. My machine was broken down, so I walked over to talk to one of the girls because he made it so tough for me the day before that I didn't want to get into an argument with him. Well, he followed me. He asked me if I had changed my mind, that he gave me time to go home and think it over, that I would drop AF of L and stick by CIO. I told him "No," that I hadn't changed my mind. He said, "I held a letter out for you until today." He says, "You are fired. You might as well get off the floor right now," and I got off.

I walked over to Don Stanberry, the Superintendent, and I said I didn't see why I should be treated that way, that I didn't do anything.

Q. Well, now, just a minute.

Just what did you tell Don Stanberry?

(Testimony of Kay Norris.)

A. I said, "That union fellow kicked me off the floor. He told me I was fired," and he shook his head and he said, "He can't do that."

So I said, "Well, I am going down to see Mr. Altman and find out if he can kick me off the floor."

I went downstairs, to the office, and Mr. Altman was not there, but Mrs. Olys was there.

Q. That is O-l-y-s.

A. I don't know how she spells her name.

Trial Examiner Ruckel: Who is she?

A. She was at the time the timekeeper.

Q. (By Mr. Royster): And after a conversation with Mrs. Olys what did you do?

A. She walked out on the platform with me, and she said, "Don't cry, Kay. You go right back up to your job," and I did.

Mr. Hecht: Mr. Examiner, whatever Mrs. Olys said I would like to have stricken.

Trial Examiner Ruckel: "Don't cry, Kay."

Mr. Hecht: "Don't cry, Kay."

Trial Examiner Ruckel: Well, it is part of what happened.

Mr. Royster: We make nothing of it.

Trial Examiner Ruckel: She went back to her job.

You went back to your job?

Mr. Hecht: I realize, Mr. Examiner, you are not impressed by this, but it does clutter the record.

Trial Examiner Ruckel: It may stand.

What did you do when you went back to your job?

(Testimony of Kay Norris.)

The Witness: I went back to my job, and I didn't say [365] anything.

Q. (By Mr. Royster): Well, you worked the rest of that day, did you?

A. I worked the rest of the day.

Q. Now, on the following day, September 1, did you come to work? A. I did.

Q. And how long did you work?

A. I worked until five minutes to three.

Q. And then what did you do?

A. I was told by my floorlady I was wanted in Mr. Railey's office.

Mr. Hecht: Mr. Royster, that is September 1?

Mr. Royster: September 1, yes.

Q. (By Mr. Royster): And did you go to Mr. Railey's office? A. I did.

Q. And whom did you see there?

A. I saw Mr. Railey, Mr. Wood, Mr. Altman, Mr. Cecil Carter, and Mr. Don Stanberry.

Q. And were other employees of the company there?

A. And other employees, about 18 or 19 of us.

Q. And was there any conversation there?

A. There was.

Q. Will you tell us what it was?

A. I said, "Well, what are we in here for?" Mr. Wood said, [366] "You will find out."

So Mr. Altman said, "Are they all here? Let's get this thing overwith." And he read where the CIO stated that we were——

Q. (Interposing) Just a moment, Mrs. Norris.

(Testimony of Kay Norris.)

I have a copy of the letter which the witness will testify was read on the occasion, and it may already be in evidence.

Mr. Hecht: I don't think so, Mr. Royster.

Mr. Royster: I will have it identified, then.

Q. (By Mr. Royster): Now, I believe you testified that a letter was read to you by Mr. Railey?

A. It was.

(Whereupon, the document above referred to was marked Board's Exhibit 13 for identification.)

Q. (By Mr. Royster): I will show you Board's Exhibit 13 for identification and ask you if that is the letter.

A. (Examining document) This is the letter.

Mr. Royster: I offer Board's Exhibit 13 for identification in evidence.

Mr. Rowell: No objection.

Mr. Edises: No objection.

Mr. Hecht: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document heretofore [367] marked for identification as Board's 13 was received in evidence.)

Q. (By Mr. Royster): Was there further conversation after the reading of this letter, Mrs. Norris?

A. Yes. I spoke up and asked why we were——

(Testimony of Kay Norris.)

Q. (Interposing) Whom did you ask now? Let's get that.

A. I asked—well, I believe Mr. Wood had said something. I don't recall what he had said. And I said to Mr. Wood, "What are the charges?" He said he didn't know. I said, "I know why. It is because we wore AF of L buttons and we distributed literature." And he said, "I guess it is so, that could be it."

Mr. Hecht: How many were present?

Mr. Royster: She named the company officials who were there, and I believe she said 18 or 19 other employees.

Mr. Hecht: Oh, I see.

Q. (By Mr. Royster): Now, was there other conversation on this occasion, Mrs. Norris?

A. Yes. Mr. Railey said, "You people—we have asked you years ago not to join any unions, and we fought you." He said, "You fought us, you joined a union. You got into trouble," he says, "Now fight it." And Mr. Wood quoted him.

Q. What do you mean by that?

A. Well, Mr. Wood said, "That is right, that is right."

Q. Did you have any conversation with Mr. Stanberry on this [368] occasion?

A. No, not while I was in Mr. Railey's office.

Q. Do you recall any further conversations in Mr. Railey's office on this occasion?

A. Yes. Mr. Wood told us all that we did too much talking, that we talked too much, that if we

(Testimony of Kay Norris.)

had kept our mouths shut we wouldn't have got into this mess.

Q. Did you hear any of the other 18 or 19 employees ask any questions of Mr. Wood, Mr. Railey, Mr. Stanberry, or any of the company officials on that occasion?

A. There was a question asked Mr. Railey as to whether he was—whether the company was neutral. He said—Mr. Wood then spoke up and said, "We are neutral." So it was asked why was Mr. Altman and Mr. Cecil Carter at the gate and locked everybody out? If they were neutral why did they do that?"

Mr. Hecht: There is no evidence here as to anybody being locked out. I think that is a very prejudicial and voluntary statement on the part of the witness and I object.

Trial Examiner Ruckel: There is no evidence as such in the case, but this witness is repeating what was said.

Mr. Hecht: Who said it?

Mr. Rowell: Well, now, wait a minute. Who is examining?

Mr. Hecht: Well, I mean I am going to object to this.

Trial Examiner Ruckel: Somebody asked that of Mr. Wood.

Mr. Hecht: Who asked it? [369]

The Witness: Someone asked. I believe it was Mr. Terry Anderson.

Mr. Hecht: Can you produce Mr. Anderson?

(Testimony of Kay Norris.)

Mr. Royster: He will be a witness.

Trial Examiner Ruckel: What was said in response to that?

The Witness: And we asked Mr. Altman then to tell us why he had been at the plant at six o'clock in the morning when he usually reports to work at seven, and he wouldn't answer us, rather, I didn't hear the answer.

Mr. Hecht: I object to that type of testimony. It has no relevancy, no materiality, whether Mr. Altman would come in at five or twelve or six.

Trial Examiner Ruckel: Well, let's hear the entire conversation.

Was any answer made to this locking out question?

The Witness: I didn't hear it, if there was. I didn't hear what Mr. Altman said.

Mr. Hecht: The witness didn't hear any answer. I move to strike.

Trial Examiner Ruckel: It may stand. It is all part of one conversation.

Give us the rest of it so far as you recall.

Q. (By Mr. Royster): Have you exhausted your recollection of the conversations that took place on this occasion, Mrs. [370] Norris?

A. Well, just—these are what I can remember. There was quite a bit said, but most of this I hashed out myself, between Mr. Railey and Mr. Wood and myself, and I know just about what I said and what they answered me.

Q. Now, do you recall if there was any mention

(Testimony of Kay Norris.)

by anyone present at this meeting with respect to changing unions?

A. Yes, we told them that.

Q. Now, can you be a little more specific? Did you tell anybody this, or did you hear someone else tell someone what you were about to relate? You say "we told."

Mr. Hecht: Mr. Examiner, before the question is answered I would like to object to any more statements as to change of unions. It is obvious Exhibits 5 and 6 show all these people intended to change unions, and, as a matter of fact, changed unions by reason of these wires, at least, severed their relations, and whatever they said later on as to the changed unions is not material here.

Mr. Royster: Well, it may be very material.

Trial Examiner Ruckel: It might be. Let's see what the company representatives said, if anything.

Now, you said, "We said," and "they said."

Now, who is "we" and who is "they"?

The Witness: Well, us 19—18, it was 18, they counted 18 that day, but there was 19 on the list, I think on the [371] list; that is why I say 18 or 19 in there that day.

Q. (By Mr. Royster): That is employees who are named on Board's Exhibit 13, is that what you intend to say? A. Yes.

Q. They were present along with the company officials that you named?

A. They were present, yes.

Q. Now, you said, or started to say "We said."

(Testimony of Kay Norris.)

A. Someone in the group.

Q. In the group. What do you mean by "group"?

A. In this group that were suspended September 1.

Q. Someone of those said——

A. Spoke up and said that we—"I don't see why we can't, why we are not entitled to change from one union to another." Then we started in telling Mr. Railey of it.

Q. Now, was there any response made to this? You testified that one of these 18 said, "I don't see why we can't change from one union to another." Did any of the company officials there present make any response to that in your hearing?

A. Not that I can recall.

Mr. Royster: All right.

Trial Examiner Ruckel: What was the answer?

(The answer referred to was read by the reporter.)

Mr. Edises: I believe she was continuing her statement of the conversation. [372]

Q. (By Mr. Royster): Was there anything further? I certainly didn't want to interrupt.

Trial Examiner Ruckel: Did you have anything further to say?

The Witness: No.

Trial Examiner Ruckel: About what was said about changing unions?

The Witness: Well, then I spoke up and I said, "I go by the American flag, and I can join any

(Testimony of Kay Norris.)

church I want. I don't see why I can't join any union I want."

Trial Examiner Ruckel: All right.

The Witness: That is all.

Trial Examiner Ruckel: Then did any of the company representatives say anything in response to that statement of yours?

The Witness: No; I don't recall.

Q. (By Mr. Royster): There came a time when you left this meeting? A. Yes.

Q. After you left the meeting did you have any conversation with Mr. Stanberry? This is on the same day I mean?

A. Yes. I went out on the platform to pick up some soap I had bought. Mr. Stanberry helped me put it in the car. And I said to Mr. Stanberry, "Well, goodby, Don. I guess I am washed up." And he said, "No, Kay, don't feel that way." He said, "This thing will all straighten out."

Q. Did you have any further conversation with Mr. Wood on that day?

A. Mr. Wood come out the door and he says, "Don't let her out yet, don't let her drive away." He says, "Just a minute." And he waited a while and somebody was on the phone, I imagine. He said, "No, they said go ahead and let them go."

So Mr. Wood walked over to me and, well, he said again that I talked too much and hadn't I wore my button I wouldn't be in the predicament I was in.

Mr. Hecht: Who said this?

(Testimony of Kay Norris.)

The Witness: Mr. Wood. He walked out on the platform and he said, "If you hadn't a wore your button," he said, "and if you hadn't talked so much," he said, "you wouldn't be in the predicament you are."

I turned away, and I walked away and got in my car and drove home.

Q. (By Mr. Royster): Have you since been employed by the Respondent?

A. I haven't.

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions by the AF of L?

Mr. Rowell: No, no questions.

Trial Examiner Ruckel: For Respondent? [374]

Mr. Hecht: Mr. Examiner, the story of this September 1 meeting as told by Mr. Zulaica was neither as dramatic nor as elaborate as the one we have just heard, and I am afraid it is going to become more so as the witnesses get on the stand. I am going to make a motion to exclude witnesses from the hearing room, or I am making the motion.

Mr. Rowell: There is certainly no necessity for that, Mr. Examiner.

Trial Examiner Ruckel: Beg pardon?

Mr. Rowell: There is no indication that anybody is learning anything they didn't know before from listening to her testimony.

Trial Examiner Ruckel: Is the motion opposed? Is that it?

Mr. Royster: Yes, I oppose the motion. I think

(Testimony of Kay Norris.)

it is unusual. There is nothing here to indicate the propriety of such motion.

Trial Examiner Ruckel: I don't know what witnesses are in here. I would be disposed to grant the motion with respect to all those except those that are named in the complaint, as having been discharged. Probably those are the only witnesses here.

Those are the ones whom you would seek to exclude?

Mr. Hecht: Yes, sir. I have a feeling that they become, or may become suggestible as they hear testimony here. [375]

Mr. Rowell: Your feelings in the matter are not very material, Mr. Hecht.

Mr. Hecht: I think it is an ordinary human understanding.

Trial Examiner Ruckel: I do ask the Board to excuse from the room all of those excepting those named in the complaint as having been discharged. The Board regards those as in a sense parties to the proceeding, with something material at stake. It doesn't think they should be excluded during the trial of their case.

Are there any others than those named in the complaint?

Mr. Royster: Mr. Examiner, do I understand that if there be others they need not be excluded unless it is intended that they testify concerning events on September 1?

Trial Examiner Ruckel: Well, no, except the

(Testimony of Kay Norris.)

Respondent has no means of knowing that that is the sole purpose of their testimony.

Mr. Royster: Well, I have no witnesses here today, and I plan to call none except possibly one who is not named in the complaint, and the one that I may call who is not named in the complaint is not here today.

Trial Examiner Ruckel: Well, that one person isn't here now, is that correct?

Mr. Royster: That is correct.

Trial Examiner Ruckel: Are you satisfied with that [376] statement, Mr. Hecht?

Mr. Hecht: Yes, sir, Mr. Examiner.

Trial Examiner Ruckel: Proceed.

Mr. Hecht: Mr. Examiner, at this point I am going to make a motion to strike all of the testimony relating to interviews with Gleichman, where the witness has testified that Mr. Mason was too far away to have heard anything.

Trial Examiner Ruckel: While it is true that in each individual case there might not have been a representative of management present, nevertheless it still is possible that such a picture will be painted of widespread activities that from their sheer number one could argue that the Respondent knew of it even though he might not have known of each individual conversation.

Mr. Hecht: May I ask how?

Trial Examiner Ruckel: The whole may amount to more than the sum of all its parts, of course.

Mr. Hecht: Yes, but a number of zeros still do

(Testimony of Kay Norris.)

not add up to one, and if there was not a company representative there it still does not bring any knowledge to the company.

Mr. Hecht: I am not going to move to strike anything that was said by Stanberry, I'm not going to move to strike anything that occurred on the meeting of September in Mr. Railey's office, but I insist that the testimony of this witness, where there was no representative of the company [377] present should be stricken as prejudicial.

Mr. Rowell: Now, furthermore, Mr. Examiner, one of the defenses in this case is that the action of the Union was because of——

Mr. Hecht: I am not making any such defense.

Mr. Rowell: Well, all right. But the defense is made by another party.

Mr. Hecht: If it is stipulated that this testimony is not binding on the Respondent——

Mr. Royster (interposing): I have entered into no such stipulation.

Mr. Hecht: All right. I make a motion, Mr. Examiner, and I want a ruling on that motion, to strike.

Mr. Rowell: Do you want to strike something from the record which you admit is material on some other aspect of the case?

Mr. Hecht: I don't care if it is material on some other aspect of the case, but it is prejudicial to this Respondent, and I move to strike.

Trial Examiner Ruckel: Motion denied.

(Testimony of Kay Norris.)

Cross Examination

By Mr. Hecht:

Q. Mrs. Norris, you testified that you distributed AF of L literature throughout the plant, or rather, at the plant? A. Yes, sir. [378]

Q. Will you take a look at Respondent's Exhibits 1 to 14?

A. (Examining documents.)

Q. Did you recognize any of those bulletins as having been distributed by you, or copies of them?

A. Well, I have distributed——

Q. (Interposing) For instance, the one marked Respondent's Exhibit 1?

A. Well, I don't know the dates. I don't know now.

Q. It is possible that you could have distributed some or most of them? A. Oh, yes, yes.

Q. And did Mr. Wood, or Mr. Altman, or Mr. Railey, or Mr. Stanberry, or any of the foremen ever stop you from distributing any of these pamphlets?

A. No, they didn't stop me, but I got some dirty looks from them.

Q. All right. What do you describe as a dirty look? We might get it into the record.

Trial Examiner Ruckel: Well, let's not get into that.

You distributed them in the plant?

The Witness: Yes, I did.

Q. (By Mr. Hecht): Did Mr. Railey, Mr. Alt-

(Testimony of Kay Norris.)

man, Mr. Stanberry, or Mr. Carter, or any one of the foremen tell you to take off your AF of L button?

A. Only Mr. Wood the day he told me I shouldn't have worn [379] it or I wouldn't have got into trouble.

Q. Did he tell you to take it off? A. No.

Q. All right. Mrs. Norris, you have identified this pamphlet, Board's Exhibit No. 12?

A. Yes, I identified it.

Q. You have read it all?

A. Well, I read it—I imagine I read it all at the time, but I haven't just now.

Q. Did anything contained in this pamphlet cause you not to wear your AF of L button?

Mr. Royster: I object.

Trial Examiner Ruckel: What was the question?

(The question referred to was read by the reporter.)

Mr. Rowell: That is immaterial, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained. She testified she wore her button all the time.

Q. (By Mr. Hecht): Mrs. Norris, did you attend a meeting or a hearing on December 17, 1945, at some place called the Green Room in Alameda County, California?

A. I appeared, yes.

Q. You appeared there. Was that in response to charges made against you by the ILWU?

A. It was.

(Testimony of Kay Norris.)

Q. And did you enter a so-called plea of some sort? [380] A. I pleaded not guilty.

Q. Did you stay there for this trial or hearing?

A. I did not.

Q. You walked out? A. I did.

Q. And you subsequently were advised by the ILWU that you had been expelled from the ILWU?

A. About three months previous to the meeting of the 17th.

Q. That you had been expelled?

Trial Examiner Ruckel: Well, suspended, wasn't it, the first?

The Witness: Oh, suspended.

Q. (By Mr. Hecht): Did you get any notice of any sort from the ILWU up to December 17, 1945? A. I did, to appear.

Q. After December 17? A. No; before.

Q. I am asking, did you get any notice after December 17, 1945? A. I did not.

Q. You got no communication of any sort?

A. I got nothing.

Mr. Hecht: I see. That is all.

Mr. Edises: Off the record for a moment.

Trial Examiner Ruckel: Off the record. [381]

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Edises): Mrs. Norris, did you stay away from work along with the other employees during that work stoppage of August 1 to August 3?

A. I did.

(Testimony of Kay Norris.)

Q. Were you aware of the ILWU's no-strike pledge during the war? A. I was not.

Q. You were not?

A. I never knew that they even said any such thing.

Q. Uh-huh. Were you aware that the labor movement in the United States, both AF of L and CIO, had pledged not to engage in strikes during the war?

Mr. Royster: Object.

Trial Examiner Ruckel: She may answer.

Mr. Royster: She has already testified—oh, excuse me. You ruled. Go ahead.

Trial Examiner Ruckel: She may answer.

A. Well, no.

Q. (By Mr. Edises): You were not aware of it?

A. No.

Q. Did you approve of the strike that the Colgate employees engaged in on August 1 to 3?

A. I beg your pardon? [382]

Mr. Edises: Will you read the question, please?

(The question referred to was read by the reporter.)

Mr. Royster: I am going to object to the question again. I don't think it is material, whether she approved or not.

Trial Examiner Ruckel: She may answer.

Mr. Hecht: It is material.

Mr. Rowell: Did the Examiner rule on it?

(Testimony of Kay Norris.)

Trial Examiner Ruckel: Did you approve of it? Did you take part in it?

The Witness: Yes, I did.

Q. (By Mr. Edises): You did approve of it?

A. Yes.

Q. Were you aware that this country was still engaged in war with Japan at that time?

Mr. Rowell: Now, Mr. Examiner, this process of inquiry is certainly prejudicial and immaterial. If the claim is made that the reason why these people were discharged was because they went on strike, I suppose that it has been already ruled that that can be shown, but to belabor the witness as to whether she knew we were in the war, and the necessity for prosecuting the war is far afield and away from this case.

Mr. Edises: I realize it is natural for counsel to want to object to questions which may hurt his case, but it is nevertheless relevant. [383]

Mr. Rowell: It doesn't hurt our case at all.

Trial Examiner Ruckel: I will sustain the objection. I suppose everyone knows that we were at war at that time.

Mr. Edises: I don't know, your Honor.

Mr. Hecht: Mr. Examiner, I think it is relevant to this extent: the Examiner mentioned at the outset of this hearing that it was a matter of practically judicial notice, this no-strike pledge of the ILWU. The witness appears to have been in a vacuum, except for the things she has heard on September 1, and I think we should be able to

(Testimony of Kay Norris.)

test her memory as to whether a war was going on, and other events, except September 1, 1945.

Mr Edises: May I answer that, Mr. Examiner: that if this witness was not aware of the very widely publicized no-strike pledge of her own union it is entirely possible she did not know there was a war going on at the time. If so, it may be that she was innocently disciplined by the ILWU.

Mr. Rowell: What a peculiar statement, obviously not made in good faith, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained.

Let's don't play with the witness. There was a war on, as she doubtless knew.

Mr. Rowell: You might ask whether the CIO knew whether there was a war on when they laid off these valuable and long [384] employed employees of this valuable company.

Mr. Edises: You bet we knew there was a war on.

Trial Examiner Ruckel: Strike this whole colloquy from the record.

Q. (By Mr. Edises): Now, you testified about changing unions. When did you change unions?

A. August 3. I mean—yes, August 3 I signed my pledge card to join the AFL, Local 233.

Q. That is the AFL Chemical Workers Union?

A. Chemical Workers Union.

Q. And were you a member of the Employees Welfare Association? A. I was.

Q. You were. And did you accept the program of the Employees Welfare Association?

(Testimony of Kay Norris.)

A. I did.

Q. Prior to the AF of L coming into the plant were the employees in the habit of wearing their CIO buttons?

A. No. We never saw a CIO button until all of this trouble came up and then the CIO officials came out and started to issue us buttons, and we were told that we had to wear them. But for a couple of years you didn't hardly see a CIO button.

Q. The CIO buttons were available, however, were they not?

A. Where? I don't know even where we could have gone and got one. [385]

Q. Were you in the habit of attending your CIO Union meetings?

A. No. Well, I was ill.

Q. So you did not attend the meetings, is that right? A. I did not.

Q. For how long did you not attend such meetings?

A. The year of 1943 I was in the hospital three different times, I didn't attend a meeting, but the CIO forced me by letter to pay all my dues. I paid the CIO my dues by Bank of America checks.

Q. When did you stop paying your dues?

A. I never did. I kept getting these letters that I was going to get kicked out of the Union if I did not pay them. Yet, I was in the hospital three different times.

Trial Examiner Ruckel: Did you ever attend a CIO meeting?

(Testimony of Kay Norris.)

The Witness: Yes, I have.

Q. (By Mr. Edises): Did you attend the meeting of the Employees Welfare Association on July 31, 1945? A. I did.

Q. You did. Did you concur in the actions taken by that meeting?

A. I—can you put that some other way? I am not——

Q. Well, I mean did you go along with——

A. (Interposing) I went right along with them. [386]

Q. What was done at the meeting?

A. Yes, sir.

Q. Now, what was your purpose in joining the AF of L Chemical Workers? What did that signify to you?

Mr. Royster: I think I will object to that, Mr. Examiner. I don't see the materiality of it.

Trial Examiner Ruckel: Do you care to state the materiality of this?

Mr. Edises: It has a certain materiality, but I would prefer—if the answer does not establish its relevance and it cannot be connected up with the issues, I would concede the appropriateness of a motion to strike, rather than disclose my purpose on cross examination.

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

(Testimony of Kay Norris.)

Trial Examiner Ruckel: Objection sustained to the last question.

Mr. Royster: We have reached a tentative stipulation during the off-the-record conference, Mr. Examiner, and, perhaps, it would be best to put it in now, even though it breaks into this witness' testimony.

Trial Examiner Ruckel: All right, sir.

Mr. Royster: It is hereby stipulated by and among counsel for the Board, the Respondent, the Intervener, and the AF of L, that all of the individuals named in the complaint [387] who have not already testified, with the exception of Rose Schneider, Calixto Rigo, Caetano Pereira, attended the meetings of July 30, July 31, and August 2, 1945, and concurred in the actions taken at these meetings.

It is further stipulated that these individuals wore AF of L buttons in the plant, that they engaged in other AF of L activity, that they participated in the work stoppage beginning at noon on July 31, and ending the morning of August 3, 1945, that they knew of the ILWU's no-strike pledge for the duration of the war, and that the following individuals plead guilty to a charge made by the CIO Union that they had participated in a wartime strike in violation of the ILWU's no-strike pledge: Glenn Hixon, Martin Heppler, Thomas Azevedo, Manuel Souza, Robert Ashworth, Felix Denkowski, Vincent Barboni, Alden Lee, John

(Testimony of Kay Norris.)

Perucca, Manuel Munoz, Ann Cerrato, Rose Ros, Ina Mae Paige, and Nick Tate.

Mr. Rowell: I would like to suggest an addition to the stipulation, that the individuals referred to——

Trial Examiner Ruckel (interposing): Couldn't this be off the record?

Mr. Edises: Couldn't this be off the record? We haven't even discussed this yet.

Mr. Rowell: Yes, off the record.

Trial Examiner Ruckel: Off the record. [388]

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Do you gentlemen stipulate to what has been dictated so far?

Mr. Rowell: Yes, I so stipulate.

Mr. Royster: The Board stipulates.

Mr. Hecht: So stipulated.

Mr. Edises: The ILWU so stipulates.

Trial Examiner Ruckel: Now, is there anything further you want to stipulate to?

Mr. Royster: Not at this moment, Mr. Examiner.

Trial Examiner Ruckel: Are you ready to proceed with the witness?

Mr. Royster: Ready.

Trial Examiner Ruckel: Further questions by the Board or by the Intervener?

Mr. Royster: I believe Mr. Edises was examining, was he not?

Mr. Edises: Yes, I was examining.

(Testimony of Kay Norris.)

I think, Mr. Examiner, that in view of the stipulation it will not be necessary to ask any further questions of this witness.

Trial Examiner Ruckel: Further questions by the Board?

Mr. Royster: Just one has occurred to me, Mr. Examiner.

Redirect Examination

By Mr. Royster:

Q. On the date you were last employed by the Respondent, Mrs. Norris, were your dues paid up in the ILWU?

A. My dues were paid up to October. November would have been my next dues.

Mr. Royster: That is all.

Mr. Edises: Wait a minute.

Trial Examiner Ruckel: Further questions?

Mr. Rowell: I think I will have her identify this rejected exhibit, Mr. Examiner.

Trial Examiner Ruckel: Which?

Mr. Rowell: The statement read at that so-called union trial. Here it is, Petitioner's No. 1 for identification.

Q. (By Mr. Rowell): Mrs. Norris, at that attempted or so-called trial by the union on December 17 did you read that statement, showing you Petitioner's Exhibit 1 for identification?

A. (Examining document) I read it.

Q. You read it on behalf of individuals who

(Testimony of Kay Norris.)

did not plead guilty to the charges as the Board's attorney just said?

Mr. Hecht: Mr. Examiner, the witness answered that no one representing the Respondent was present at this trial or hearing, and I object to any further questioning or testimony.

Mr. Rowell: I haven't offered it in evidence.

Trial Examiner Ruckel: No; it is a rejected exhibit. [390]

Mr. Edises: We will object to the question in that the last question was leading and suggestive.

Trial Examiner Ruckel: Sustained.

Q. (By Mr. Rowell): You read it on behalf of——

Mr. Edises (interposing): I object to that. Its very form shows that it was a leading question.

Trial Examiner Ruckel: On whose behalf did you read that exhibit?

The Witness: On all of us.

Trial Examiner Ruckel: Who is "all of us"?

The Witness: That had received letters from the ILWU to attend the trial.

Q. (By Mr. Rowell): Well, subsequent, after you got through reading that statement, did a certain group of individuals walk out and not stand trial? A. Yes.

Mr. Edises: Now, I object to this evidence. The AF of L has raised the point that they regard the proceedings of these trials as irrelevant to any of the issues. We intend later, as a matter of fact, to offer in evidence, for what it may be worth, the

(Testimony of Kay Norris.)

entire transcript of the proceedings at those trials and the formal documents which followed upon them. Now, I submit that that is the best possible evidence of anything that went on at these trials.

Trial Examiner Ruckel: She may state whether or not [391] she and the others walked out or not. She stated that they did.

Mr. Hecht: As a matter of fact, she already answered that on my examination, Mr. Examiner.

Trial Examiner Ruckel: Yes, she has already answered it.

Mr. Rowell: All right. No further questions.

Trial Examiner Ruckel: That is all.

Mr. Edises: Just a moment. There was another question asked after I completed my examination, he went into a new subject, and I may want to question about that.

Mr. Rowell: It was not a new subject, Mr. Edises. She testified on your examination——

Trial Examiner Ruckel (interposing): Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Recross Examination

By Mr. Edises:

Q. Mrs. Norris, when was the last time you paid dues to the ILWU?

A. I don't know for sure, but I have a check

(Testimony of Kay Norris.)

stub at home. I think it was April I paid four months.

Q. In April you paid four months?

A. 1945. No, I wouldn't say for sure, but I have got a check stub at home that had come back that the ILWU had cashed. [392]

Q. After you started to—after you joined the AF of L, did you pay any dues into the CIO?

A. No because——

Q. (Interposing) Well, now, just a minute.

Mr. Rowell: Let her finish the answer.

Mr. Edises: I am not interested in her reasons. I didn't ask that question.

Trial Examiner Ruckel: She has answered the question. It was "No"?

The Witness: "No."

Redirect Examination

By Mr. Rowell:

Q. Why didn't you pay up your dues?

Mr. Edises: I object to that as calling for an opinion and conclusion of the witness.

Trial Examiner Ruckel: She may state it.

A. I had been paying dues a whole year, and I was ill. I was told that I am not supposed to pay dues when I am ill, and I have three records stating I was in the hospital. So I talked to my Stewards about it. Then went to the Union, and the Union, in the place of giving me back all of the

(Testimony of Kay Norris.)

dues I had paid in; they only allowed me, I think, six months.

Q. (By Mr. Rowell): Were you paid up on September 1, were your dues paid up?

A. So that brought my dues, what they credited me brought [393] my dues up—they gave me a credit of six months, that brought my dues up to November, paid up to November.

Q. 1945? A. Yes.

Mr. Rowell: No further questions.

Mr. Edises: Let me get this straight.

Recross Examination

By Mr. Edises:

Q. You testified that you did not pay any dues to the CIO after you joined the AF of L, is that correct?

A. Well, they wouldn't take them.

Mr. Edises: Now, Miss Reporter, will you please read back her testimony on that point?

Trial Examiner Ruckel: Your answer now is they would not take them?

The Witness: They would not take any money.

Mr. Edises: Will you read back her testimony on that point?

The following testimony was read by the reporter as follows:

"Q. Mrs. Norris, when was the last time that you paid dues to the ILWU?

"A. I don't know for sure, but I have a

(Testimony of Kay Norris.)

check stub at home. I think it was April I paid four months.

"Q. In April you paid four months?

"A. 1945. No, I wouldn't say for sure, but I have got a [394] check stub at home that had come back that the ILWU had cashed.

"Q. After you started to—after you joined the AF of L, did you pay any dues into the CIO? A. No."

Mr. Edises: That is all I wanted.

Q. (By Mr. Edises): Now, may I see your dues book, please? A. (Handing book.)

Q. Now, you testified the last time you paid was in May, you paid four months at that time?

A. April, around April.

Q. In April?

A. I said I didn't know for sure, I would have to look at this check stub to see. I know I paid four months at this time.

Q. Around April? A. Yes.

Q. And that was the last time you paid any dues into the CIO? A. Yes.

Q. And the CIO wouldn't take your dues after that, isn't that right?

A. The CIO refused my November and December dues.

Q. Yes. In other words, the next time you tried to pay dues into the CIO they wouldn't take them, is that right? [395]

A. I was out, suspended.

(Testimony of Kay Norris.)

Q. Just answer the question.

A. The last time they refused my dues.

Mr. Edises: I see. That is all.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

Mr. Royster: Well, may the witness have her book back?

Mr. Edises: Oh, yes, sure. Oh, may I ask this witness another question?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Now, this book which I hold in my hand is your CIO dues book, is it not?

A. It is.

Q. And I ask you if this does not show that the dues for May, June, July, August, September, and October were paid in one lump sum at the same time?

A. (Examining book) From May until October was what they had deducted me. From January to April is what I had written them a check for, the four months, from January to April.

Q. Now, the question is whether this book does not show that your dues for May through October were paid for, whether in the form of cash or credit, in one lump and at one time?

A. Yes, sir.

Q. Now, when was the last time that you attempted to pay dues into the CIO? [396]

A. I called Emma, the Secretary of the CIO, and asked her if they would accept my dues, and she says, "No."

(Testimony of Kay Norris.)

Trial Examiner Ruckel: When?

Q. (By Mr. Edises): When?

A. I called her in November, the end of—my dues came due in October, and I called her around Thanksgiving in November.

Q. Of 1945?

A. '45. And she said, "No," that they would not accept my dues because I was suspended.

Q. And when was your employment terminated at Peet's? A. When I was——

Q. When did you stop working at Peet's?

A. September 1.

Mr. Edises: No further questions. (Handing book to witness.)

Mr. Rowell: No questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: As long as this matter of paying dues is being made an issue——

Mr. Edises: Well, we didn't bring it in.

Mr. Rowell: Let's go off the record.

Trial Examiner Ruckel: Off the record. [397]

(Remarks outside the record.)

Trial Examiner Ruckel: Let's proceed. Call the next witness.

Mr. Royster: Calixto Rigo.

CALIXTO RIGO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, Mr. Rigo?

A. Calixto Rigo, 1232 Talbot Avenue, Berkeley, California.

Q. Mr. Rigo, where were you, or rather, were you working from July 23 to August 6, 1945?

A. That was my vacation period.

Q. And your answer is that you were not working? A. That is right.

Q. On August 31, 1945, did you come to the Respondent's plant? A. No, sir. August 31?

Q. August 31? A. Yes, sir.

Q. And tell us what happened there?

A. Well, it was 7:15 in the morning, I was ready to go to work, and Mr. Gleichman stopped me and handed me a letter.

Q. Where was this? [398]

A. About—say about 50 feet from the gate.

Q. 50 feet from the gate. You were on your way to work? A. About 50 feet.

Q. Did Mr. Gleichman say anything to you?

A. Well, he told me, "Here is a letter for you, and you are fired. You cannot work here any more." And that, "You go to your A. F. of L. friends to help you now."

(Testimony of Calixto Rigo.)

Q. Were your dues paid up in the ILWU at that time?

Mr. Hecht: Just a moment.

Trial Examiner Ruckel: Just a moment.

Mr. Hecht: Mr. Examiner, may I make a motion to strike the testimony of the witness as to something that occurred 50 feet away from the gate of the plant and at which conversation there was no representative of the company present?

Mr. Royster: Well, Mr. Examiner, of course this evidence doesn't show that the company knew what Mr. Gleichman said on this occasion, but I submit that it has value to indicate the reason why Mr. Gleichman, a representative of the ILWU, would not permit this man to enter the plant.

Mr. Hecht: The reason doesn't bind us. It has no materiality in the charge against us.

Trial Examiner Ruckel: Motion denied.

Mr. Edises: Well, I want to enter my objection to this question on the ground that it does not prove or tend to prove any of the issues in the case. [399]

Trial Examiner Ruckel: Which question now do you mean?

Mr. Edises: This last question.

Trial Examiner Ruckel: As to the payment of dues?

Mr. Edises: As to the payment of dues.

Trial Examiner Ruckel: As I understand the pleadings, it is not an issue.

Mr. Royster: Well, may it be understood then, by counsel for all the parties, that there is no con-

(Testimony of Calixto Rigo.)

tention here on behalf of anyone that any of the persons named in the complaint were delinquent in their dues to the ILWU at the time that they were suspended?

Mr. Hecht: I will stipulate to this extent:

Mr. Edises: Wait a minute. I don't see how you can stipulate.

Mr. Royster: He can stipulate to anything.

Mr. Hecht: I will stipulate that we did not know that, or rather, that no information was given to us as to whether the men had paid or had not paid their dues.

Trial Examiner Ruckel: I imagine that might be included in the other stipulation.

Do the other parties stipulate, agree to the stipulation as stated by Mr. Royster?

Mr. Edises: No, we can't stipulate to the fact. What we can stipulate—and I think this is all Mr. Royster needs to have—we will stipulate that the ILWU is not contending [400] in this case that the union's disciplinary action in regard to the complaining parties was based on non-payment of ILWU dues.

Mr. Royster: That was my stipulation as I thought I dictated it. That is agreeable to me.

Trial Examiner Ruckel: Your stipulation was they were not delinquent. He says he does not know whether they were.

Mr. Royster: I said with respect to our contention, but that is agreeable to me.

(Testimony of Calixto Rigo.)

Mr. Edises: Do you want to read that back, please?

Mr. Royster: Your stipulation?

Mr. Edises: Yes.

(The stipulation referred to was read by the reporter.)

Mr. Royster: That is agreeable for the Board; and I so stipulate.

Mr. Hecht: I will accept that stipulation, too.

Mr. Rowell: I will accept it also.

Mr. Royster: That is all the questions I have of Mr. Rigo.

Trial Examiner Ruckel: Any further questions by the A. F. of L.?

Mr. Rowell: None.

Mr. Hecht: I have no questions.

Trial Examiner Ruckel: Any questions by the Intervener?

Cross-Examination

By Mr. Edises:

Mr. Rigo, were you a member of the Employees Welfare Association? Did you join that?

A. No, sir.

Q. Did you join the A. F. of L.?

A. Yes, sir, on August 8.

Q. On August 8? A. That is right.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

We will recess until 1:45 this afternoon.

(Whereupon, at 12:00 M. a recess was taken until 1:45 P.M. of the same day.) [402]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 P.M.)

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Call Robert Ashworth.

Mr. Hecht: Mr. Royster, before you call Mr. Ashworth, we have Mr. Railey, the Vice President of the company, whose name you have heard mentioned in this hearing before, and he is leaving for the East tonight.

Will you agree that he be put on out of order as a company witness at this time?

Mr. Royster: Yes, sir.

Mr. Hecht: Is that agreeable to you, Mr. Rowell?

Mr. Rowell: Yes.

Mr. Edises: No objection.

Mr. Hecht: Will you take the stand, Mr. Railey?

B. W. RAILEY

called as a witness by and on behalf of the Colgate-Palmolive-Peet Company, respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hecht:

Q. Will you state your name for the record, Mr. Railey? A. B. W. Railey, R-a-i-l-e-y. [403]

Q. And what is your business or occupation?

A. Vice President of the Colgate-Palmolive-Peet Company.

Q. Since what time have you held that position?

A. Since 1938.

Q. So I take it you were the Vice President in the month of July, 1945? A. Yes, sir.

Q. And up to and including September 1, 1945?

A. Yes, sir.

Q. Where are your offices located?

A. The Pacific Coast office at Berkeley, California.

Q. All right, sir. And were you at your office on July 28, 1945? A. No, sir.

Q. Were you at your office on July 30, 1945?

A. Yes, sir.

Q. What time do you usually arrive at work?

A. Around eight in the morning.

Q. And you arrived at that time on July 30, 1945? A. Yes, sir.

Q. Did anything unusual occur on July 30, 1945?

A. Well, during the day, or shortly after lunch,

(Testimony of B. W. Railey.)

our Superintendent, Mr. Altman, came to my office with the communication that he had received from the ILWU No. 6, I believe is the official title, in which they had asked us [404] to suspend five employees of the company.

Q. Did Mr. Altman show you that letter?

A. He did.

Q. I show you Board's Exhibit No. 3 which purports to be a copy of a letter dated July 30, 1945, on the stationery of the ILWU, addressed to your company.

Will you look at it and tell me if that is the letter you have reference to?

A. (Examining Document): Yes, that is the letter.

Q. That is the letter. And are the five persons named in the letter the ones you had reference to?

A. Yes, sir.

Q. And what occurred after Mr. Altman showed you that letter?

A. We took the letter and went back to Mr. Altman's office where there were awaiting us certain representatives of the CIO.

Q. Can you name them?

A. My recollection is that Mr. Heide was one of them, Mr. Gleichman, Mr. Duarte, and whether there were others I am not too sure, but I am sure of those three.

Q. There were five present, you say?

A. I am not sure of the number.

(Testimony of B. W. Railey.)

Q. Did a conversation ensue between you and the representatives of the CIO? [405]

A. It did.

Q. Will you relate to the best of your recollection the gist or substance of that conversation?

A. We told these people that this was—came as a very great surprise to us, literally a bombshell, we knew nothing about what it was about, or any reason why these men should be suspended, and protested the thing because we told them they had been loyal employees as far as we were concerned, and we had no charges against them. We were quickly reminded of our contract with the CIO which specified—which carried a paragraph to the effect that all employees must be in good standing with the union to work at our plant.

Q. Was the contract produced?

A. It was called to our attention, this particular paragraph that I refer to.

Q. Was the contract itself or a copy of the contract——

A. (interposing): A copy of the contract was read at the time.

Q. I will show you Board's Exhibit 7 and have you look at it. It purports to be a copy of a contract between the Respondent and the ILWU, and see if you can pick out the clause you have reference to.

A. (Examining contract): Well, of course, I don't have reference to the number of it. I can find it.

(Testimony of B. W. Railey.)

Q. I think I will save you time and tell you it is on the [406] first page, Mr. Railey.

A. (Indicating): That is the clause that I am referring to.

Q. Will you specify the number of the clause?

A. Section 3.

Q. You discussed that clause with the representatives of the CIO? A. Yes, sir.

Q. Did any further conversation or discussion ensue after that?

A. These gentlemen that represented the CIO told us that these men must be discontinued immediately. They told us that they had sent a notice of their suspension to each man by registered mail, each man that was involved. They told us if we didn't discharge them they would.

Mr. Royster: I didn't get that answer, the latter part of it.

(The answer referred to was read by the reporter.)

Q. (By Mr. Hecht): What else happened, Mr. Railey?

A. It was finally agreed that we should call these five men into the office. When they came in——

Q. (Interposing): At this point you might name those five men, Mr. Railey.

A. There was Mr.——

Mr. Royster: They are in the letter.

Mr. Hecht: Yes. [407]

(Testimony of B. W. Railey.)

The Witness: Mr. Marshall, Mr. Moreau, Mr. Haynes, Mr. Smith— May I look at this again and check my memory? (Examining document): And Mr. Luchsinger.

Q. (By Mr. Hecht): And you called them into your office? A. We did.

Q. And what occurred then?

A. When they came to our office the CIO officials handed each of them a carbon copy of a letter which they stated had been mailed to their homes. These gentlemen looked at the letters briefly and crushed them in their hands and stuck them in their pockets and walked out of the office.

Q. No conversation between the five men?

A. No conversation.

Q. Between the five men and the CIO officials?

A. No.

Q. Any statement to you by these five men?

A. Not at the time, no.

Q. Did anything unusual outside of that occur on July 30? A. No.

Q. Now, calling your attention to July 31, 1945, did you go to your office on that day?

A. Yes, sir.

Q. At about the same time, eight o'clock?

A. About eight o'clock in the morning.

Q. Did anything unusual occur on July 31, 1945?

A. When I arrived at the office there was a committee of our employees waiting in the office to see me, and asked if they could have an interview.

(Testimony of B. W. Railey.)

Q. Can you name that committee?

A. There was Mr. Sherman, Mr. Olsen, Mr. Thompson, and Mr. Lomberg.

Q. What occurred?

A. I took them into my office and had a talk with them there. They told me that the object of their call was to ask us to put these five suspended employees back to work. We again, or at that time told them that we——

Q. (Interposing): By "we" who do you mean, Mr. Railey?

A. Well, I am referring to the company when I say "we." I told them that we had a contract to live up to, and the contract stated unless they were in good standing with the union they couldn't work in the factory, and that was a problem between the CIO and these employees.

Q. Did they say anything to what you have just stated?

A. They told us that if we didn't reinstate these people and put them back to work immediately that they wouldn't be responsible for the consequences.

Q. Did you ask them what they meant by that?

A. No, I didn't go into detail.

Q. Let me ask you, was Mr. Altman present at this meeting?

A. He came in shortly after the meeting started.

Q. Was any statement made by the committeemen to Mr. Altman?

A. Well, I don't believe direct to Mr. Altman.

(Testimony of B. W. Railey.)

I think they made the same statement to him they made to me.

Q. I see. Any further conversation between you and these gentlemen?

A. Well, yes, we told them we were sorry about the whole thing, all we were interested in was running our plant. And when Mr. Altman came into the office he told me that the officials of the CIO were in his office, which is in another part of the factory. I proposed that we invite the CIO officials over to our office and see if we couldn't iron out this trouble with this negotiating committee. This they agreed to, and the CIO officials came over to our office. We told them why they had been asked to come over, and from there on the conversation was largely between the CIO officials and this negotiating committee.

Q. Was this a free-for all, or had either side spokesmen?

A. I would say it was more or less a free-for-all. As I recall it, Mr. Lynden, the President of the CIO, and Mr. Sherman of this negotiating committee, did most of the talking.

Q. Can you relate the gist of this conversation or talk between the two men?

A. Well, to boil it down, the CIO people told this [410] negotiating committee that these people would have to stand trial on the charges against them, they could not work until those charges were disposed of, and they repeatedly reminded them, reminded this negotiating committee of the oaths

(Testimony of B. W. Railey.)

that they took when they joined the CIO and the consequences of a violation of those oaths, and assured them that they had done everything they could to get increases for the employees of the company, pointed out that the wages were frozen, nothing they could do about it, nothing that the company could do about getting an increase. And at one stage of the meeting the Negotiating Committee, without any further ado, walked out.

Q. About what time would you say that was?

A. Oh, I would guess it was probably about 9:30 in the morning.

Q. Did you continue the conference with the CIO officials? A. Yes, we did.

Q. What was the subject of the conference?

A. We told them that our factory the afternoon before had been a very— in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done. And we asked them if they wouldn't leave the grounds, and they said, "Well, they would leave if this negotiating committee and the— or rather if the five Stewards that had been [411] suspended would leave. And we immediately went out to the factory and located the five Stewards, and I believe all of the members of the negotiating committee were with them at the same time, told them the request that we had made of the CIO officials, and told them we were going to make the same request of them because

(Testimony of B. W. Railey.)

the CIO officials certainly wouldn't leave if they didn't leave, and they finally agreed to leave.

Q. Anything else unusual occur on July 31, 1945?

A. Well, excepting the result of this statement, they wouldn't be responsible for the consequences. Our factory worked until noontime of that day, and when the noon hour was over there was quite a large number of our people that did not return to work.

Mr. Royster: I move to strike that, as a result of the consequences.

Mr. Hecht: That may go out.

Q. (By Mr. Hecht): The fact is that your people did not come to work?

A. That is right.

Q. What else occurred on that day, if anything?

A. In the afternoon I received a telephone call from Mr. Thompson.

Q. Can you place about the time of it, Mr. Railey?

A. Probably around three o'clock, approximately three o'clock, I would say, asking me if I would come to the Finnish Hall [412] at Berkeley where our employees were holding a meeting. I decided to go, and Mr. Sherman presided at this meeting. They discussed the possibility of our taking the suspended people back to work again.

Q. Were you asked that directly by anyone?

A. We were ask if we would take them back to work.

(Testimony of B. W. Railey.)

Q. Who asked you?

A. I am sure it was put to us by Mr. Sherman who was the Chairman of the meeting.

Q. Yes.

A. They said that was the object of the meeting.

Q. What reply did you make to that request?

A. We referred again to the contract, this paragraph, Section 3.

Q. Was the contract discussed at the meeting?

A. I told them I didn't have a copy of the contract, but I was sure they were familiar with that paragraph, and several of the people who were there said they had copies of the contract, and that sentence was referred to, yes.

Q. You mean that section was referred to?

A. That section, the sentence particularly? that sentence of the section which stated they must be in good standing with the union.

Q. Any other requests made of you at this meeting in addition to that? [413]

A. Oh, they asked for suggestions, or some way that they could work it out so these people could go back to work, but we had no suggestions to make, and again told them that was their— between the employees and the union.

Q. I take it that you left the meeting at some time? A. Yes, very shortly.

Q. Let me ask you specifically: While you were present at this meeting were any formal reso-

(Testimony of B. W. Railey.)

lutions offered from the floor, passed upon and adopted?

A. I don't recall anything in the way of a formal resolution. They did ask for anyone— invited anyone to make statements that wanted to make a statement, and several people did get up and say that they didn't think anyone should go back to work until they could all go back to work. There was no— there might have been a general feeling that they wouldn't go back, but there was certainly no formal vote or no formal resolution taken.

Q. While you were present? A. No.

Q. And I take it the meeting was still in progress when you walked out? A. That is right.

Q. Let me ask you, Mr. Railey: There has been testimony here in the record (and it is in the record) that a notice was posted on July 28 that called for a meeting of the [414] Employees Welfare Association. Have you ever seen that notice?

A. No.

Q. You haven't? A. No.

Q. Did you ever see it posted?

A. No, sir.

Q. As a matter of fact, you were not in the office July 28? A. I was not there.

Mr. Rowell: He couldn't very well have seen it then.

Mr. Hecht: Just to be sure.

Q. (By Mr. Hecht): I hand you Board's Ex-

(Testimony of B. W. Railey.)

hibit No. 4, Mr. Railey. Will you look at it and tell me if you have ever at any time seen that?

A. (Examing document)

Q. Of course, outside of the time you saw it in my office at lunch time today?

A. No, that is the first time I saw it, in your office today.

Q. Mr. Railey, did you make any attempt to find out the reason why the persons you have named were suspended?

A. Did we make any attempt?

Q. You yourself ever make any attempt?

A. No. [415]

Q. Did you ask the CIO officials?

A. I don't recall of ever asking them, but we were sure that that was— they had the right to suspend anyone for many different reasons.

Mr. Rowell: Now, I ask that that be stricken, Mr. Examiner. It is a matter of his legal conclusion, about being sure they had the right.

Mr. Hecht: No; that is what they told him.

Trial Examiner Ruckel: They told him, assured him that they had the right to suspend——

Mr. Rowell: I didn't understand the answer that way. Is that the way it was?

Mr. Royster: Yes.

Mr. Rowell: He testified, to my hearing, that he never asked them.

Trial Examiner Ruckel: He said he didn't ask them but they told him.

The Witness: The question came up of these

(Testimony of B. W. Railey.)

five men. He told us that they could be suspended for many different reasons and they had to stand trial before they could go back to work.

Q. (By Mr. Hecht): I see. As a matter of fact, the majority of your employees did not work from about noon, July 31, to the morning of August 3, 1945? A. That is correct. [416]

Q. Did you during that period get information from any source as to the nature of the controversy, or what was said to be the nature of the controversy? A. No.

Q. Did you read the Daily Press?

A. Yes.

Q. Was there anything in the Daily Press with reference to this controversy?

A. The racial question came up in the papers, many of the papers that I read.

Q. That was papers published during this period.

A. During the shutdown period.

Q. Did anybody apply to you among the nine named for reemployment during the month of August, outside of the instances you have already related? A. No, no.

Q. Were you at the plant on September 31, 1945?

Mr. Royster: September 1, I think you mean.

Mr. Hecht: September 30. No, pardon me. I have the wrong date entirely.

(Testimony of B. W. Railey.)

Q. (By Mr. Hecht): On or about September 1, 1945? A. Yes.

Q. Did anything unusual occur on September 1, 1945?

A. Yes. We had a letter presented to us listing a group of additional people that would be suspended at the factory, [417] some 17 or 18 people.

Q. Did that letter come directly to you?

A. No. I think it came to the superintendent of the factory.

Q. To Mr. Altman, that is?

A. I think so.

Q. I hand you Board's Exhibit 13, a copy of a letter dated September 1, 1945, on ILWU stationery, addressed to your company. Will you look at it?

A. (Examining document): Yes, this is the letter.

Q. Did you make inquiry from anyone for the reasons of the suspension of these people other than what is stated in the letter?

A. No, sir.

Q. And no one told you? A. No, sir.

Q. Upon receipt of that letter, or upon being shown that letter, what did you do?

A. Mr. Wood, Mr. Altman, and myself called them into my office.

Q. Called whom?

A. This group of 18 that are listed in this letter.

Q. Named in Board's Exhibit 13?

(Testimony of B. W. Railey.)

A. Yes, sir. And told them of the receipt of the letter, and what the alternative was. [418]

Q. You called the men in?

A. That is right, men and women.

Q. Was it a meeting? A. Yes.

Q. Was it an orderly meeting?

A. I thought so.

Q. All right. Do you know Mr. Albert Zulaica?

A. I might know him, but I don't know him by name.

Q. I am going to ask you specifically—withdraw that. It has been testified at this hearing, Mr. Railey, that at this meeting of September 1, 1945 you stated in the presence of the persons present, "You must remember that I did not want you to join the union in the first place, and you must take the consequences."

Now, I ask you categorically, did you make any such statement?

A. No, we didn't make such a statement. Mr. Wood presided at this meeting, and on one occasion, possibly more, he told them that the union was of their own selection.

Q. Did you yourself make such a statement?

A. No, sir.

Q. It has been further testified, Mr. Railey, at the same meeting of September 1, 1945, you stated substantially the following:

"We asked you not to have a union, we fought you at it, [419] now you have it, you must be satisfied."

Did you make any such statement?

(Testimony of B. W. Railey.)

A. Well, I couldn't have made such a statement because we didn't fight them at any time.

Mr. Royster: Not responsive.

Mr. Hecht: I think it is responsive.

Trial Examiner Ruckel: He said he didn't make any such statement.

Mr. Royster: I move to strike the answer.

Mr. Hecht: The statement that was made this morning by Mrs. Norris was, "We didn't want you to have a union. We fought you on it." I repeated it to the witness. The witness said he couldn't have made such a statement because "we never fought them."

Mr. Royster: That is right. He said he couldn't have made such a statement.

Q. (By Mr. Hecht): Did you make such a statement? A. I did not.

Q. By the way, Mr. Railey, do you know Mr. Harvey Howard?

A. Only by telephone conversations.

Q. You have never met him personally?

A. No, sir, not to my recollection.

Q. Did Mr. Howard in any conversation you had with him ever request permission for A.F. of L. representatives to call at the plant for the purpose of furthering the campaign of the [420] A.F. of L.?

A. Not in that way. He did ask to see us on a number of occasions, but we declined to talk to him at the time.

(Testimony of B. W. Railey.)

Q. But he didn't ask for permission for A.F. of L. representatives to go through the plant?

A. No, sir, not me.

Mr. Hecht: That is all.

Mr. Edises: May I ask a couple of questions of this witness?

Trial Examiner Ruckel: Yes.

Mr. Edises: I don't care what the order is.

Q. (By Mr. Edises): Mr. Railey, this purports to be a copy of a telegram that was sent to the company on or about the date it bears.

Do you recall receiving such a telegram?

A. (Examining document): No.

Q. Do you know who received the telegram?

A. No. We have a record of having received the telegram in our office, but what happened to it I do not know, and can't find anyone who admits having received it up to date.

Q. In other words, the telegram was received but you can't find your copy?

A. According to our files it was received there.

Q. But now my present question is simply whether, to the best of your recollection, that is a copy of the telegram? [421]

A. Yes, I do recall on our own copy it had four names rather than two at the bottom.

Q. Yes.

A. Lonnberg and Olsen, so that couldn't——

Q. (Interposing): Now, apart from that detail it is, to the best of your recollection, an accurate copy of the telegram? A. Yes, it is.

(Testimony of B. W. Railey.)

Q. Now, I ask you whether prior to the time that you received this telegram you had any knowledge that your employees were withdrawing from the C.I.O. or forming another labor organization?

A. No, we had no knowledge.

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. Royster) Now, Mr. Railey, you testified that on July 30 you protested to the ILWU the requested suspension of these five Stewards?

A. Yes.

Q. Now, how did you make that protest, what did you say?

A. Well, I couldn't tell you what I said. I can only give you a general idea of our feeling, which I can well remember, and what went on at the time. We might be classed as babes in the woods on a thing like this, but it was something entirely new to us, and entirely unexpected, and when this letter was [422] brought to me by Mr. Altman I admit that I was completely non-plussed. I didn't know what to do, or anything about it. At that time I didn't even recall the wording of the contract, which they maintained, and which our best advice afterwards seemed to bear out, that they had a right to suspend people, and as long as they were under suspension, or not in good standing with the Union, that they couldn't work there.

Q. Well, what did you say to the ILWU people by way of protest?

(Testimony of B. W. Railey.)

A. We told them we had no reason for discharging these people as far as we were concerned. It was brought to our attention that we had nothing to do with the matter.

Q. Did you ask them to reconsider their action at all?

A. We pleaded with them not to take action because we needed work, and we need products, a very vital business, and there was no feeling on our part in connection with it.

Q. And you stated that this was an experience new to you? A. That is right.

Q. During the time that you have been at that plant and during the time that this ILWU contract has been in effect, is it true, then, that this is the first occasion where anything like this has happened?

A. No, the first occasion anything bordering on this had happened. I think there had been cases where other people had not been allowed to work there for one reason or another, [423] maybe an individual.

Q. Individual instances?

A. Not a group where they selected five Stewards.

Q. And these five Stewards that were selected were the only Stewards in the plant as far as you knew, isn't that so? A. That is right.

I think that is our complete list of Stewards, isn't it, or was?

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: This was all the Stewards?

The Witness: That was all we had at the time, wasn't it, Mr. Altman?

Mr. Altman: That is right.

The Witness: Five Stewards represented in the entire group.

Q. (By Mr. Royster): Did Mr. Altman tell you on July 30 that a notice had ben posted on the bulletin board on the previous day advertising a meeting of the Employees Welfare Association?

A. No, he did not.

Q. Did you know on the morning of July 30 that such a meeting was scheduled to be held on the afternoon of that day?

A. I had no intimation of it of any kind, no knowledge.

Q. When did it come to your knowledge that such a meeting had been held, or was being held?

A. When they telephoned me in the middle of that afternoon [424] asking me to come up and attend the meeting.

Q. Now we are talking about different dates, Mr. Railey. You received an invitation by telephone to attend a meeting on July 31. I believe that was your testimony. Is that not correct?

A. Well——

Q. I am not trying to confuse you.

A. No, there is some question in my mind about the date, whether it is July 30 or 31.

(Testimony of B. W. Railey.)

Q. Well, perhaps we can fix it this way: The meeting to which you received an invitation, and which you attended, took place on the afternoon after the employees had left the plant?

A. Well, then, it was July 31.

Q. Now, when did you gain knowledge that there was a meeting on the afternoon of the preceding day, that is, on July 30?

A. Well, when our employees failed to come back to work.

Mr. Hecht: I don't think he testified he had knowledge of the meeting of July 30.

Mr. Royster: I don't think he did either.

Mr. Hecht: No.

Mr. Royster: I am trying to find out now.

Mr. Hecht: Yes.

Mr. Royster: I think we are still talking at cross [425] purposes.

Q. (By Mr. Royster): The testimony shows so far that there was a meeting of your employees on the afternoon of July 30? A. Yes.

Q. On the following day four committeemen, whom you named, came to your office and interceded on behalf of the Stewards. When their intercession was fruitless, at noon of that day the employees walked out, and then held another meeting, which was the meeting that you attended?

A. On the 31.

Q. I am asking you now with reference to this meeting on July 30. When did you learn that such a meeting had been held?

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: Well, ask him if he did learn it.

Q. (By Mr. Royster): Or did you learn that such a meeting had been held?

A. I didn't know too much about the meeting, but I know our Superintendent reported to me a lot — a large number of employees didn't come back to work, they all went away in automobiles at noon that day, and we were told, or some way got the information that they had gone to attend a meeting some place.

Q. That is on the 31st?

A. No: that is on the 30th. [426]

Trial Examiner Ruckel: What day of the week was the 30th, do you recall?

The Witness: A Monday.

Mr. Hecht: The 30th was Monday.

Did you hear about any meeting on the 30th, on Monday?

The Witness: Well, no official notice. As I say, they all drove away. I say "all"; a large number of them did. When they didn't come back, we were told they were holding a meeting some place.

Mr. Rowell: Well, now, it is perfectly proper to tell the witness what the dates were because we stipulated to it.

Mr. Hecht: Yes. It has been stipulated, it has been testified here, Mr. Railey, there was a meeting at 4:30 on the 30th.

Did you ever hear about that meeting at 4:30 on the 30th?

(Testimony of B. W. Railey.)

The Witness: I couldn't identify such a meeting, either the time or couldn't certify that there was a meeting, either one.

Mr. Hecht: All right.

Q. (By Mr. Royster): Of course, I was not asking for certification. I was asking you to tell me when, or if you ever heard of such a meeting, and I believe you testified that you are not sure you did.

A. Only as I say, that when the people went away the report [427] went around they had gone to attend a meeting on this Monday, July 30. I didn't check up to see what the time of the meeting was, or where it was, or who was involved.

Q. Now, it was on Tuesday, July 31, that the four men came to your office and asked that the Stewards be replaced or reinstated. Did any one of them tell you that they had been selected at a meeting of employees? A. No.

Q. During the time that these four men were in your office, did you not receive a copy of a telegram which Mr. Edises showed to you?

A. As I testified before, I had never seen the telegram. It was news to us.

Q. And it is your testimony now that on the morning of July 31 you did not receive a copy of that telegram, which is Board's Exhibit No. 6?

A. That is right.

Q. Now, you testified that these ILWU representatives on the 30th day of July, after reminding you of the contract terms, told you that if the

(Testimony of B. W. Railey.)

Company did not discharge the Stewards the ILWU would, is that correct? A. That is correct.

Q. Does the ILWU discharge the people at your place, Mr. Railey?

A. No, but they do tell us who can work there and who [428] cannot.

Q. Well, what meaning did you gather from this, that if you did not discharge them the ILWU would?

A. I gathered if we did not want to tell them they were under suspension that they would, in other words, it referred to a suspension.

Q. Now, again on July 31 when the four Stewards were in your office, is it not a fact— not four Stewards,——

A. The negotiating committee.

Q. The four on the negotiating committee were in your office, is it not a fact those four men were told they would be suspended from the ILWU?

Trial Examiner Ruckel: Told by whom?

Mr. Royster: Told by the ILWU representatives? A. That I couldn't say.

Q. (By Mr. Royster): You didn't hear that?

A. I don't think they intimated such a thing at the time, but that I couldn't—there may have been a suspension on the road to those four at the time for all I know.

Q. Well, wasn't it said it your presence by ILWU representatives that "You four are going to be suspended"? A. I don't recall that.

(Testimony of B. W. Railey.)

Q. Yes. There was a pretty acrimonious exchange between the ILWU and the four committeemen during part of that meeting, was there not, Mr. Railey? [429]

A. I don't know what is the right word to use for it. As I say, they were reminded of their oath and, of course, Mr. Sherman, who was speaking for the negotiating committee, accused the Union of failure to get increases for the men and for the people working there. And Mr. Lynden for the Union did bear down to the extent that they had taken an oath, and they had failed to observe it, and he pointed out what happened to a traitor for the United States, and they were a traitor to their Union, that they had the right to discipline their people. In fact, he said — this was when the war was still on— he said they had many times been called upon to discipline people, keep them working. And he said even in the shipyards they had been called upon to discipline people outside of working hours who were inclined to drive fast, or drink, or something like that, to try to keep them working, because the government said, "Unless you straighten your man out he can't work here." And it was a defense of the CIO by Mr. Lynden, naturally, and their policies, and resentment on the part of Mr. Sherman, who was a former Business Agent, and whether he was disappointed or what I couldn't say, but at any rate, he was obviously not in sympathy with CIO.

Q. Well, it became quite apparent as this con-

(Testimony of B. W. Railey.)

versation took place that there was a schism developing in the ranks of the CIO, of the ILWU, did it not, at the plant? [430]

A. It certainly was, at least between the CIO and certain individuals. Whether it was, what percentage——

Q. Well, I believe you testified (and if you didn't you can correct me) that these four— strike that.

I won't press that question.

Trial Examiner Ruckel: During this meeting was the AF of L mentioned by anybody?

The Witness: No.

Q. (By Mr. Royster): Was the Employees Welfare Association mentioned by anyone?

A. No. If I may bring it up, I don't think the AF of L came into it until some time later.

Trial Examiner Ruckel: How much later?

The Witness: Well, I don't know. Maybe Mr. Wood would have a better recollection of the date than I have.

Trial Examiner Ruckel: In what form did it come to you?

The Witness: Well, it didn't come to us in any form, except when Mr. Howard got into the thing. Mr. Howard was not in the original— in other words, according to my understanding——

Trial Examiner Ruckel: Who is Mr. Howard?

The Witness: He was the man who was presumed to represent this group at one time. I be-

(Testimony of B. W. Railey.)

lieve he is the head of one or two unions on the other side of the Bay, or was at that [431] time.

Q. (By Mr. Royster): Now, sometime early in August, perhaps the 5th, 6th, 7th, or 8th, along in there, the Respondent was advised, was it not, that a petition had been filed by the AF of L, seeking certification as bargaining representative of the employees at Peet's? A. Yes.

Q. And is it true that after you learned of the filing of this petition that it became apparent that there was campaigning in the plant by both sides?

A. Yes, sir.

Q. Each seeking to secure the favor or support of the employees? A. That is right, yes, sir.

Q. And that condition continued for some time?

A. Yes, sir.

Q. What was the position of the company with respect to this campaign, Mr. Railey?

A. Well, we certainly were not enthusiastic about it in any respect, either on the part of the CIO or any group that was apposed to the CIO, because it certainly interfered with our production.

Q. Did you have any favor for either side?

A. No, I wouldn't say that we have.

Q. Did you ever advise the employees that you stood [432] neutral?

A. There was no official notice of any kind, no, but we certainly tired to, in all of our discussions among ourselves and everything, we took the position that it didn't make any difference who represented the employees to us.

(Testimony of B. W. Railey.)

Q. That was in your discussions among your management group, you mean?

A. That is right.

Trial Examiner Ruckel: Does the record show when this petition was filed?

Mr. Hecht: I think it does.

Mr. Royster: Yes, it does. The complaint alleges it and I believe the answer admits it, and, incidentally, I plan to introduce the decision and direction of election.

Trial Examiner Ruckel: What was the date of the filing of the petition, do you recall?

Mr. Royster: I believe it was August 3rd, but I will have to check that.

Mr. Hecht: August 3rd is correct.

Mr. Royster: August 3rd.

Mr. Hecht: Pardon me, Mr. Royster. When you say August 3rd, it was filed with the Board August 3rd.

Mr. Royster: Yes, it was filed with the Board on August 3rd.

Trial Examiner Ruckel: Well, let us go further and [433] stipulate what happened. Was there a hearing?

Mr. Royster: Yes. That is set forth in the complaint too. I guess there would be no objection to stating now what happened and see if everybody is in agreement with it.

The petition was filed with the Board on August 3, 1945. On August——

(Testimony of B. W. Railey.)

Mr. Hecht: May we go off the record, Mr. Examiner?

Trial Examiner Ruckel: I would like this on the record.

Mr. Hecht: Just for one moment.

Trial Examiner Ruckel: Off the record, please.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Well, may it be stipulated by the parties that on August 3, 1945, the AF of L filed a petition in Case 20-R-1486; that on August 8, 1945, the company, the ILWU and the AF of L met at the office of the Board in San Francisco and held a preliminary conference on the petition; that on August 14, 1945, notice of hearing on the petition was issued, and that this notice of hearing was received by the company on August 17; that on August 22, a hearing in the representation case was held in San Francisco; that on September 26, 1945, a decision and direction of election was issued by the Board, and on October 16, 1945 an election in pursuance to the decision and direction of election was conducted? [434]

Trial Examiner Ruckel: What was the result of the election?

Mr. Royster: The result of the election was as follows: The approximate number of eligible voters; 390——

Mr. Hecht: 390— how many?

Mr. Royster: 390.

Trial Examiner Ruckel: 390.

(Testimony of B. W. Railey.)

Mr. Royster: Void ballots, 6; votes cast for the AF of L, 126; votes cast for the ILWU, 184; votes cast against participating labor organizations, 1; valid votes counted, 308; challenged ballots, 44; valid votes counted plus challenged ballots, 352.

Mr. Rowell: Now, Mr. Royster, that total number of 390 includes some service men who were employed there at the time, doesn't it?

Mr. Royster: I don't know whether it does or not.

Mr. Rowell: Does it not also include some discharged— these discharged employees as well as those who took their places?

Mr. Royster: I assume that it does, but I don't see that it is material.

Trial Examiner Ruckel: I don't either, but did it include the——

Mr. Rowell: (Interposing): Well, the figure is slightly swollen from the previous—— [435]

Mr. Royster (Interposing): Well, there was an increase.

Mr. Hecht: The plant got back the full complement. There were some service men that were working part time. The displaced employees voted, so that probably accounts for the 390.

Trial Examiner Ruckel: Did the individuals named in the complaint vote?

Mr. Royster: They cast challenged ballots, Mr. Examiner, almost all of them, perhaps all of them. I don't know.

(Testimony of B. W. Railey.)

Well, I think we have come to the end of the stipulation.

Trial Examiner Ruckel: Yes. May the facts as set forth by counsel be stipulated to?

Mr. Rowell: Yes.

Mr. Hecht: Yes.

Mr. Edises: As set forth in Mr. Royster's stipulation without the various interpolations?

Trial Examiner Ruckel: Well, naturally, yes.

Mr. Edises: So stipulated.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: And subject to the official record anyway.

Mr. Edises: Yes. I suggest we introduce into the record the official direction of election and tally.

Mr. Royster: Well, I wish to make one statement here [436] which, of course, is not a stipulation by anybody. Then I will offer the decision and direction of election. The statement is merely to clear up the record on this particular point, that challenged ballots were not sufficient in number to affect the result of the election, but that the election was protested by the AF of L, and that there has been no final determination of the objections filed.

Mr. Examiner, I offer in evidence as Board's exhibit next in order the decision and direction of election in Case No. 20-R-1486.

(Thereupon the document above referred to

(Testimony of B. W. Railey.)

was marked Board's Exhibit No. 14 for identification.)

Mr. Hecht: May we go off the record for a moment?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Is there any objection to Board's 14 being received?

Mr. Rowell: No, no objection.

Mr. Hecht: No objection.

Mr. Edises: That is the decision, is it, Board's 14 is the decision?

Trial Examiner Ruckel: Yes. It will be received.

(Thereupon the document heretofore marked Board's Exhibit No. 14 for identification was received in evidence.) [437]

Mr. Edises: How about the tally? Have you got a copy of the tally?

Mr. Royster: It is in the stipulation or rather—yes, it is in the stipulation.

Mr. Hecht: You want the official tally?

Mr. Edises: Well, I guess that is enough.

Trial Examiner Ruckel: Are there any further questions of the witness?

Mr. Royster: No further questions by the Board.

Trial Examiner Ruckel: Any questions by the AF of L, Mr. Rowell?

Mr. Rowell: Yes, I have one or two. I am little bit confused by this telegram situation.

(Testimony of B. W. Railey.)

Q. (By Mr. Rowell): Mr. Railey, showing you Board's Exhibit 6, namely, the telegram sent by the Employees Welfare Association, can you tell me when that telegram first came to your attention?

A. It first came to my attention day before yesterday, I think, when we were looking it up.

Q. Well, now, when Mr. Edises was questioning you didn't you identify this as a true copy of a telegram that you had received?

A. Not a true copy, but the wording is approximately the same.

Q. Well, with what original document were you comparing it [438] in your memory?

A. With our file copy at the Berkeley office which we found in the files over there. It is not a true copy to this extent: the file copy that we have was addressed with my name on the top, it carried four names at the bottom instead of two.

Q. Now, furthermore, your testimony as to the issues involved in this trouble, certainly the presence of the AF of L in the picture cleared up your doubts as to what were the issues, didn't it?

Mr. Hecht: I object to that question.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): The conversation between this committee of four and the CIO union officials, in substance Mr. Sherman's position was that he and other employees were dissatisfied with the conduct and action of the CIO union, is that right?

(Testimony of B. W. Railey.)

Mr. Hecht: Well, he stated the facts, Mr. Rowell. There is no point in asking for his conclusion now.

Trial Examiner Ruckel: Well, counsel has the right to cross examine. The witness stated I think, or said that the CIO was reproached for not having obtained increases in wages and things like that.

Mr. Rowell: That was only preliminary.

The Witness: As far as the negotiating committee was [439] concerned, all they were asking us for was to reinstate these five people.

Q. (By Mr. Rowell): I know, but in this conversation between the negotiating committee and the CIO Union in your presence I believe you testified that among other thing there was an expression of dissatisfaction by Mr. Sherman as to the wage standards of the CIO union and such things as that?

Mr. Edises: Well, I will submit an objection, that the testimony speaks for itself as to what he said.

Trial Examiner Ruckel: This is preliminary.

Mr. Rowell: This is preliminary, that is all.

Q. (By Mr. Rowell): Is that in substance what Mr. Sherman said, or do you wish to put it in your own words?

A. No. I wouldn't say that he made the flat statement that he— in the way you put it.

Q. Well, put in your own words then.

(Testimony of B. W. Railey.)

A. Sometime during the discussion the question of advances, increases in wages came up, and the CIO people explained to Mr. Sherman that they were powerless to get any increases under the Stabilization Act and so forth.

Q. Yes.

A. And they had gotten all for Colgate employees that anyone could get.

Q. Well, now, that conversation came up, you say. Now, did Mr. Sherman bring it up? [440]

A. No, I think the CIO people brought it up in their defense of the CIO handling of the Colgate situation.

Q. Well, now, you say they were making a defense against someting. There must have been some sort of an accusation made. What I am trying to get at is that. What did the committee of four say to the CIO people?

A. Well, frankly, I don't recall that they started the discussion in that at all.

Q. You mean this discussion was all one-sided, just the CIO people talking?

A. No, it was not one-sided, but the CIO's argument with Mr. Sherman was over the question of reinstating these five people, and reininding him of the contract and his knowledge of the Union constitution, and what the CIO stood for, and what they had done for Colgate employees. Maybe "defense" is a bad word, but, in other words, that was——

Q. (Interposing): Now, what did anybody of

(Testimony of B. W. Railey.)

the committee say to the CIO people as to what the CIO had done or failed to do?

A. Oh, I don't recall that they said anything that was——

Q. (Interposing): You seem to be able to recall half of the conversation and only one side of it? A. No, I——

Mr. Edises (Interposing): Now, I object to that kind of characterization. [441]

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: I am just asking for the cooperation of the witness.

Trial Examiner Ruckel: Let's find out if there was another side of the conversation.

Q. (By Mr. Rowell): What charges did the CIO— I withdraw that.

Did the CIO people say that Sherman was misleading the employees?

A. No. When we brought these people in there —you asked for my cooperation. I will tell you again that our interest in the thing was to keep our plant running and to see if we could get them together in connection with the suspension of these five people and go to work. And the CIO then at length explained their entire position, their constitution, and so forth, to Mr. Sherman.

Q. I realize that, Mr. Railey, but you have told me that in addition the CIO defended their actions so far as obtaining wage increases for the employees and matters of that kind. It only occurs to me

(Testimony of B. W. Railey.)

that there must have been a discussion back and forth between the two groups, one side said, "No, you didn't do it," and the other side said, "Yes, you did do it"?

A. I can appreciate it naturally would occur to you that there are two sides to it, but I have no recollection in [442] mind along that line.

Q. Well, is your recollection better as to the matter of the turmoil in the plant to which you objected? You mentioned that there was a certain amount of turmoil and conversation and talking back and forth between the employees which was causing the trouble.

Can you elaborate on that? Can you state what the nature of the turmoil was?

A. Well, I can say this: that our stewards during that time were doing no work, and a lot of people in the plant were not doing any work. The CIO people had their men going through the plant checking on who was apparently in good standing or who was not, but there was just too much turmoil in the factory to suit us, and you could walk through the factory and see groups talking here and groups talking there and no work being done.

Q. Did you hear what the groups were talking about? A. No; no.

Q. Did you obtain information from other people in the company as to what they were talking about? A. No.

Q. What you saw, however, indicated that there

(Testimony of B. W. Railey.)

was at least a difference of opinion amongst certain employees as to a union?

Mr. Hecht: I object to that as calling for the conclusion [443] of the witness.

Trial Examiner Ruckel: Objection sustained. This was just prior to the election, this period of turmoil?

Mr. Rowell: No.

The Witness: No, it was not just prior to the election. It was largely in the day before they discontinued work, before noon time; largely that morning.

Q. (By Mr. Rowell): That would be on July 30, 1945? A. July 30.

Q. And when you attended this meeting at the Finnish Hall (and it has been stipulated that it was July 31, 1945), while you were present, was there any action, formal of otherwise, taken to indicate to you the employees' support of the case of these five shop stewards? Was there a show of hands, for example?

A. I don't know anything——

Mr. Edises (Interposing): Well, now, I object to that as immaterial. What is the significance of whether there was any showing of support or not?

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the reporter.)

Mr. Edises: Furthermore, there is no dispute that the meeting was called.

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: No further questions. [444]

Trial Examiner Ruckel: Mr. Hecht, do you have anything further?

Mr. Hecht: Yes, Mr. Examiner.

Redirect Examination

By Mr. Hecht:

Q. Mr. Railey, what is manufactured at your plant in Berkeley?

A. Laundry soap, toilet soap, and glycerin are the principle products.

Q. You were manufacturing glycerin during this period? A. Yes, sir.

Q. And that, I take it, is a war implement?

A. I beg your pardon?

Q. Is that a war implement?

A. Very much so.

Q. Well, do you remember what you production was at the time?

A. Well, it varied for months, but I would say we produced between four and five hundred thousand pounds a month.

Q. Did this work stoppage interfere with your production of glycerin? A. Bound to.

Q. It did interfere with it? A. Yes.

Mr. Hecht: I think that is all.

Mr. Rowell: One or two questions come to my mind on that [445] score.

(Testimony of B. W. Railey.)

Recross Examination

By Mr. Rowell:

Q. You say when a request was made of you by the CIO for the discharge of these employees you resisted it? A. Yes.

Q. And what was your reason for resisting that request of the CIO? I believe you stated it. I wish you would state it again.

Mr. Edises: It has already been asked and answered. I object to it on that ground.

Trial Examiner Ruckel: I believe he said he protested, not resisted.

Q. (By Mr. Rowell): Now, isn't it a fact that in acceding to the request of the CIO it interfered with your production in the plant likewise?

Mr. Hecht: Objection.

Trial Examiner Ruckel: Objection sustained. He said there was a contract.

Mr. Rowell: Well, I mean it is certainly just as immaterial for Mr. Hecht to bring out that this work stoppage interfered with the production, and then to prevent me from bringing out that the discharges of these old competent employees likewise caused an interference with war production, and that was caused by the CIO union. [446]

Trial Examiner Ruckel: There was no objection to Mr. Hecht's question, or I might have sustained the objection to it.

Mr. Rowell: That is the reason I didn't object to it.

(Testimony of B. W. Railey.)

Mr. Edises: Mr. Rowell wants us to get into the chicken and the egg argument. ILWU's position is there is no provocation for engaging in strikes during wartime.

Trial Examiner Ruckel: Any further questions?

Redirect Examination

By Mr. Edises:

Q. I would like to ask Mr. Railey whether during the period of the war there had been any other strikes, any strikes of any kind at your plant prior to this episode?

A. No, sir.

Q. Do you know what the ILWU's position was on strikes during wartime?

Mr. Royster: Object. What difference does it make whether he knew or not?

Trial Examiner Ruckel: Objection sustained.

Mr. Hecht: Mr. Examiner, I may interpolate here that the question here has been whether or not the company had knowledge of the reasons why these men were being suspended. I maintain that if Mr. Railey knew——

Trial Examiner Ruckel: (Interposing) Yes, I concede possible materiality to the question. I change my ruling. He may answer if he is aware of it.

What was your question again, please?

Mr. Edises: Would you mind reading the question?

(The question referred to was read by the reporter.)

A. I do.

(Testimony of B. W. Railey.)

Q. (By Mr. Edises): What was that position?

A. There should be no work stoppage, no strikes, no lockouts.

Q. You have a number of colored employees at your plant, do you not? A. Yes, sir.

Mr. Rowell: That is objected to as immaterial.

Trial Examiner Ruckel: The answer may stand.

Q. (By Mr. Edises): And the ILWU has supplied colored workers as well as white workers to your plant, have they not? A. Yes, sir.

Mr. Rowell: Objected to as immaterial.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): And, to your knowledge, has there ever been any discrimination by the ILWU colored workers?

A. None whatever at our plant.

Q. After this difficulty started, did you hear from any source that the issue of discrimination, of racial discrimination, was present, was in the picture?

Mr. Rowell: That is objected to on the grounds it is [448] hearsay.

Trial Examiner Ruckel: He may answer.

A. All that I knew is what I read in the newspapers.

Q. (By Mr. Edises): Did you read of such a charge in the newspapers? A. Yes, sir.

Mr. Rowell: Mr. Examiner, this is really farfetched.

Trial Examiner Ruckel: What is the objection?

(Testimony of B. W. Railey.)

Mr. Rowell: He read it in the newspapers, and they are offering that as testimony.

Mr. Hecht: On direct he testified that he read about the controversy at the plant in the newspapers, and it was one of the statements made in the newspapers.

Trial Examiner Ruckel: We want to know what was in his mind. There may have been none such, so far as the fact of the matter is concerned, but if he believed it, why, that would be the material thing.

Q. (By Mr. Edises): Were you aware, Mr. Railey, that there had been charges filed against or rather, made against the stewards at the plant that they were inadequately fulfilling their duties as stewards?

A. I did not know what the charges were against the stewards.

Q. You did not know what the charges were?

A. No. [449]

Q. Did you know that there were some such charges? A. No, sir.

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: No questions.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

We will recess for ten minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Call the next witness.

Mr. Royster: Thomas Azevedo.

THOMAS AZEVEDO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, Mr. Azevedo?

A. Thomas Azevedo, 1326 88th Avenue, Oakland.

Mr. Hecht: Mr. Royster, before we go farther, would this witness be one subject to that stipulation that went in this morning?

Mr. Royster: Yes, sir.

Q. (By Mr. Royster): Did you come to the Respondent's [450] plant on August 31?

A. Yes, I did.

Q. Will you tell me what happened when you approached the plant?

A. Well, when I came to the gateway there was about 12 of the union men there, and three standing in front of the radiator of the car, and two on each side, on the running board, and Gleichman, he handed me a letter and said, "Here is this letter," and said, "Take it back to your union, see if they can put you back to work, you are so crazy about them."

Q. Did you enter the plant——

Mr. Hecht: I make the formal motion I have

(Testimony of Thomas Azevedo.)

been making, Mr. Examiner. May that testimony be stricken on the ground it is not binding on the Respondent, no executive or supervisory employee of respondent's being present, and not occurring in respondent's plant.

Trial Examiner Ruckel: You may have a standing objection to the entire line of testimony.

Mr. Hecht: Very well. Is that agreed and stipulated to, gentlemen?

Mr. Royster: Well, no.

Mr. Rowell: No.

Trial Examiner Ruckel: You may have a standing objection and exception and the objection is overruled. [451]

Mr. Hecht: All right.

Q. (By Mr. Royster): Now, did you enter the plant?

A. I couldn't, the gate was locked. It wasn't locked, but Mr. Carter was holding the gate closed.

Q. Mr. Carter? A. Mr. Carter.

Q. Is that Mr. Cecil Carter?

A. Cecil Carter, that is right.

Q. Assistant superintendent?

A. That is right.

Q. Since August 31 have you worked for the company? A. No, sir.

Q. Did you go to the respondent's plant on September 4, 1945? A. That is right.

Q. And did you speak to anyone there?

A. Well, I went in there to pay my hospitalization.

(Testimony of Thomas Azevedo.)

Q. And did you have a conversation with anyone?

A. Well, Mr. Wood came out to the gate when I was coming home.

Q. And did you have a conversation with Mr. Wood?

A. Yes, I did. As I walked out of the gate he asked me, "Did you get everything you wanted?" I said, "No, I got what I wanted except my job."

He said, "Well, why don't you go up to the union hall [452] and straighten yourself out?", and I said, "Well, I wouldn't have a chance if I did go up there. I was guilty before I was proved guilty." He said, "No, you go up there and ask for a trial, and I will come up there and see that you get a fair trial. If you would have kept your mouth shut in the first place you wouldn't be in the mess that you are in now."

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Hecht: Just a moment, if you don't mind, Mr. Examiner. Mr. Wood can't hear very well, and could we have the testimony referring to Mr. Wood read back by the reporter?

Trial Examiner Ruckel: Will you read it back please, the last bit applying to Mr. Wood?

(The testimony referred to was read by the reporter.)

Trial Examiner Ruckel: Any further questions for the A F of L?

Mr. Rowell: No, no questions.

(Testimony of Thomas Azevedo.)

Trial Examiner Ruckel: Cross examine.

Mr. Hecht: I have no questions.

Mr. Edises: No questions.

Mr. Royster: You are excused, Mr. Azevedo.

(Witness excused.)

Mr. Royster: We will call Vincent Barboni.

VINCENT BARBONI

called as a witness by and on behalf of the National Labor [453] Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Vincent Barboni, 1625 Francisco Street.

Mr. Hecht: Mr. Examiner, may we ask that the witnesses speak up?

Trial Examiner Ruckel: You will keep your voice up as loud as possible.

The Witness: Yes.

Q. (By Mr. Royster): Were in Mr. Railey's office on September 1, 1945, Mr. Barboni?

A. Yes, I was.

Q. Will you tell us what took place there?

A. Well, Mr. Railey and Mr. Wood read that paper off with all the names.

Q. Telling you of your suspension?

A. Yes, sir.

(Testimony of Vincent Barboni.)

Q. And was there a further conversation that you heard?

A. Well, there was quite a bit of talk.

Q. And what was the talk?

A. Well, it was about these people being suspended, and why they were suspended.

Q. Well, what was said that you now recall?

A. Well, there was some talk about if we didn't wear union [454] buttons we wouldn't be where we were then.

Q. Well, was it one of the group of employees who said that? A. No, it was Mr. Railey.

Q. Mr. Railey? A. Yes.

Q. Said that if you hadn't worn union buttons you wouldn't be where you are now? A. Yes.

Mr. Royster: That is all.

Cross Examination

By Mr. Hecht:

Q. Mr. Barboni, do you know Mr. Railey?

A. Yes, I do.

Q. Did you see him here today? A. Yes.

Q. What was he doing here?

A. Well, he testified.

Q. And you are sure he said that?

A. Yes.

Q. There is no doubt in your mind about it?

A. No.

Q. What else do you remember was said?

A. Well, I don't know; Mr. Wood talked; Mr. Altman talked.

(Testimony of Vincent Barboni.)

Q. And what makes it stand out in your mind that Mr. Railey said that if you hadn't worn union buttons you [455] wouldn't be in the trouble you are in?

A. Well, it is just something, one of the things I remember.

Q. He didn't say that if you hadn't distributed you wouldn't be in the trouble you are in?

A. No, I don't remember that.

Q. He didn't say that if you had kept your mouth shut you wouldn't be in the trouble you are in?

A. Well, I have heard that, but I couldn't say just who said it.

Q. You say you heard that but you don't know who said it? A. Yes.

Mr. Hecht: I have no further questions of the witness.

Q. (By Mr. Edises): When did you join the A F of L, Mr. Barboni?

A. Oh, it was right about the beginning.

Q. Roughly when, do you know? Can you fix it with relation to some event?

A. Well, it was about a week or so before the walkout; a week or so before the walkout.

Q. A week or so before the walkout?

A. Well, a continuous meeting, or whatever you want to call it.

Q. You are quite sure of that?

A. Well, no, but then the record would show it, the book. [456]

(Testimony of Vincent Barboni.)

Q. Well, you testified to that just a moment ago, didn't you? A. To what?

Q. That you joined the A F of L a week or two before the lockout?

A. Well, I think I was one of the first ones to join the A F of L.

Q. Well, now, just answer my question. Didn't you testify that you joined the A F of L a week or two before the lockout? A. Yes.

Q. Before the walkout?

A. Before the walkout.

Q. Now, that might be a little bit inaccurate one way or the other? A. Yes.

Q. It might be a day or two off, is that right?

A. Yes.

Q. And are you just as sure of that testimony as you are of the testimony about Mr. Railey?

Mr. Rowell: That is objected to.

Mr. Edises: That is a perfectly legitimate question, Mr. Examiner. This is cross examination. I want to test the witness' credibility. I have a right to.

Trial Examiner Ruckel: I don't think it is proper to compare and weigh one answer against some other answer. [457] Objection sustained.

Q. (By Mr. Edises): What would you say, Mr. Barboni—what would your answer be if the fact were that the A F of L didn't even come into the picture until after the walkout? Would that change your answer in any way?

A. Well, I don know just what you mean.

(Testimony of Vincent Barboni.)

Mr. Hecht: Mr. Examiner, may we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Mr. Edises: No further questions.

Mr. Royster, the stipulation this morning applies to this witness too?

Mr. Royster: Yes.

Trial Examiner Ruckel: Well, Mr. Railey made mention of your button. Did he say what kind of a button?

The Witness: No, but I took it for A F of L.

Trial Examiner Ruckel: He didn't say "A F of L?"

The Witness: No.

Trial Examiner Ruckel: Any further questions? (No response.) That is all.

(Witness excused.)

Mr. Edises: Mr. Royster, could we have a stipulation as to the time that the previous witness joined the A F of L?

Mr. Royster: Barboni?

Mr. Edises: Mr. Azevedo. [458]

Mr. Royster: Oh. August 3, he told me he signed an A F of L card.

Mr. Edises: Will that be stipulated?

Mr. Royster: That is agreeable to the Board.

Mr. Edises: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster: Ann Cerrato.

ANN CERRATO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Ann Cerrato, 1028 62nd Street, Oakland, California.

Mr. Hecht: May we have the same instruction to this witness, please?

Trial Examiner Ruckel: Keep your voice up, please.

Q. (By Mr. Royster): Were you in Mr. Railey's office on September 1, 1945?

A. I was.

Q. What took place there?

A. Well, we went in there, and the letter was read to us that we were all—we were dismissed by the company because we were in bad standing with the union. And then there was [459] some talk about it and some questions brought up by Kay Norris and Terry Anderson and some of the other workers in there, but I didn't ask any questions myself.

Q. Well, did you hear any of the questions and were there any answers to the questions?

A. Yes. I heard one question when Kay Norris

(Testimony of Ann Cerrato.)

said whether the reason we were being laid off was because we wore the A F of L buttons.

Q. And was there any answer to that remark?

A. Well, I don't recall that there was, but according to—about the union, Mr. Railey did make the statement that they didn't want the union in there in the first place, and we had it, we got it in there, so we had to take the consequences.

Q. Now, did Mr. Wood have anything to say at this meeting?

A. Well, Mr. Altman and Mr. Railey did almost all the talking for the company.

Q. What did Mr. Wood say, and speak up loudly so we can hear you?

A. I can't remember, can't recall exactly what Mr. Wood did say.

Mr. Roysier: That is all.

Q. (By Mr. Rowell): Were you there when the union was originally organized at the plant?

A. You mean the ILWU? [460]

Q. Yes.

A. We were transferred over from Local 96 to the Warehouse Union on July 1, 1941.

Q. Did you have any information as to the company's attitude toward union organization at that time?

Mr. Edises: Just a moment, I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: Well, now—well, all right, I won't press it.

No further questions.

(Testimony of Ann Cerrato.)

Mr. Hecht: I have just one question, Miss Cerrato.

Cross Examination

By Mr. Hecht:

Q. There were about 18 of you in this room?

A. There was.

Q. And since the time this incident occurred, have you had occasion to discuss with the other 18 just what happened there?

A. If I talked about it to anyone?

Q. Yes. I mean whether you conferred with Mrs. Norris or with Mr. Hellbaum or with any of the other people who were present there on September 1? Have you talked it over with them?

A. Well, we all talked about it after we got out of his office because we all went to the same place.

Q. Sure, and have you since that time talked about it again?

A. Well, off and on everybody has.

Q. And you attended that trial on September 17?

A. I certainly did.

Q. And it could be quite possible that you didn't hear some things that the other people thought they heard? That could be possible, couldn't it?

A. About what do you mean, at the trial?

Q. That is, certain things were heard by the others that you didn't hear?

A. Well, I heard Mr. Railey say that——

Q. (Interposing) I am not asking you that question. Please stick to my question, if you will.

(Testimony of Ann Cerrato.)

In other words, it is quite possible (there were 18 of you there) that you did not hear what the other 17, or the other 16, or the other 15, or the other 5 might have heard? Some things might have escaped you? A. Some of them probably did.

Q. You might have been told some of the things that escaped you; that is true?

A. I am repeating what I heard myself.

Mr. Hecht: Answer my question. Will you read my question?

(The question referred to was read by the reporter.) [462]

Q. (By Mr. Hecht): I am asking you whether you were told some of the things that you yourself didn't hear? A. I was.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Miss Cerrato, are you a member of the A F of L Chemical Workers Union?

A. I am.

Q. When did you join that union?

A. August 3, 1945.

Mr. Edises: That is all.

Mr. Royster: Thank you.

(Witness excused.)

Mr. Royster: Felix Stanley Denkowski.

FELIX STANLEY DENKOWSKI

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Felix Stanley Denkowski.

Q. Were you in Mr. Railey's office on September 1, 1945? A. Yes, sir.

Q. Will you tell us what took place there?

A. Well, it was quite a time before we went into Mr. Railey's office. There was supposed to be 19 members, but [463] the one was a misspelled name, he was not there.

Mr. Hecht: May we ask how the witness knows one was a misspelled name?

Mr. Royster: Oh, it is common——

Mr. Hecht: (Interposing) Because I was——

Trial Examiner Ruckel (Interposing): Just a moment.

Mr. Royster: It developed, I understand, in this meeting, Mr. Hecht.

There was a name on this letter requesting suspension of a fellow named Richards and it should have been Richmond.

Mr. Hecht: All right.

Trial Examiner Ruckel: Go ahead and tell us what happened then.

The Witness: So we waited, and finally we go to Mr. Railey's office, and we wait some more, for about 15 minutes.

Trial Examiner Ruckel: Don't tell us what didn't happen. Just tell us what happened.

The Witness: And then discussions—everybody

(Testimony of Felix Stanley Denkowski.)

started asking questions, three or four people at a time.

Q. (By Mr. Royster): Well, now, what did Mr. Railey say, if he said anything?

A. Everybody was asking Mr. Railey different questions, and why we were suspended, and Mr. Railey said, "Well, I am neutral." He says, "I am neither—the union put their charges against you," and, he said, "you brought it on [464] yourselves," and "I didn't want this trouble of a union in the first place, so you people brought it on yourselves," so that is all that Railey said.

Q. Now, did Mr. Wood say anything?

A. There was quite a few people asking Mr. Wood at the same time—I believe Mr. Wood said that if we didn't wear the A F of L buttons and didn't talk too much, why, we wouldn't get in this trouble in the first place.

Mr. Hecht: I suggest there is a conflict between your witnesses, Mr. Royster.

Mr. Royster: If so, why, the record will show it.

Trial Examiner Ruckel: Don't comment on the testimony.

Mr. Hecht: I have no questions.

Cross Examination

By Mr. Edises:

Q. Are you a member of the A F of L Chemical Workers Union, Mr. Denkowski?

A. Yes, now.

Q. When did you join the organization?

(Testimony of Felix Stanley Denkowski.)

A. Well, I joined after we had a meeting.

Q. I was not present at the meeting so I don't know when that would be.

A. Well, I don't just exactly remember when because when we had a meeting the meeting was continued, and I joined that after we had a meeting, in that time. I don't know just exactly when.

Q. Do you know whether it was around August 3rd?

A. It is something there, or afterwards.

Mr. Edises: Mr. Royster——

Mr. Royster: Yes.

Mr. Edises: Do you have a copy of the constitution of the A F of L Chemical Workers Union?

Mr. Royster: I haven't.

Mr. Edises: Would it be possible for either of you gentlemen to produce a copy of the constitution of the A F of L Chemical Workers Union?

Mr. Rowell: I think I can find one. I don't know the materiality of it.

Has anyone got an extra one around here?

Trial Examiner Ruckel: Do you want it for this witness?

Mr. Edises: Yes.

Mr. Rowell: Has anyone got one in their pocket, the constitution and by-laws of the International Chemical Workers Union?

Mrs. Norris: No, I haven't.

Mr. Rowell: I am sorry. I don't have a copy here with me. I can furnish one by tomorrow, certainly, but I don't have one here.

(Testimony of Felix Stanley Denkowski.)

Mr. Edises: Well, that will be satisfactory. Tomorrow morning?

Mr. Rowell: Yes. [466]

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I don't think it will be necessary to recall the witness. I think we can probably agree to the matter that I had in mind.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: That is all.

Mr. Royster: That is all.

(Witness excused.)

Mr. Hecht: May we go off the record here for a moment?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Are there any other witnesses?

Mr. Royster: I have to check through here and see that they are on different points, Mr. Examiner.

Trial Examiner Ruckel: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Nick Tate.

NICK TATE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Nick Tate.)

Direct Examination

By Mr. Royster:

Q. Will you state your name and address [467] please?

A. Nick Tate, 1451 Blake Street, Berkeley.

Q. When was the last day you worked for respondent, Mr. Tate?

A. I think it was around August — about August 26.

Q. Were you told on August 26 (or whatever the date was) that that was your last day at work?

A. No. This day was on a Thursday, and I told the boss I wanted to take off Friday and Saturday, and he told me I could. And I got a letter from the union that I was suspended.

Q. When did you get the letter?

A. August 31.

Q. And since that time you have not been back to work? A. No, sir.

Q. Now, before you took the days off, did you have a conversation with Ed Bopp and Hack Gleichman?

A. Well, I was back there working and they would come around and wanted to examine books.

Q. Now, can you tell us when this was with respect to the time you last worked?

A. I should say about a week before I got knocked off the job.

Q. All right. Now, what was the conversation?

A. Well, Ed told me that he wanted to check my book, and I went in there and got my book, and

(Testimony of Nick Tate.)

I was just standing there and he said—he looked over to me and told—I don't know [468] if he was talking to Hack, or the whole crowd, he said, "Check in Nick Tate's book, he was one of the A F of L organizers."

Q. Now, who was present when this statement was made by Mr. Bopp?

A. Well, there was quite a few boys around there that works, and Cecil Carter; Cecil Carter and Ed Bopp and Hack Gleichman.

Q. Cecil Carter. Is he the assistant superintendent? A. Supervisor.

Mr. Royster: Supervisor. That is all.

Cross Examination

By Mr. Hecht:

Q. Do you know whether Mr. Carter heard this conversation?

A. He was standing right there.

Q. What do you mean by "standing right there"?

A. Right in the room where we was at.

Q. How large a room is it?

A. I didn't get the question.

Q. How large a room is it?

A. Oh, about this big (indicating), a little space right there, that big (indicating).

Q. Did you say anything——

Trial Examiner Ruckel: (Interposing) That doesn't tell the record anything. How big is it? 20 feet by 30 feet? [469]

(Testimony of Nick Tate.)

The Witness: About something like that.

Q. (By Mr. Hecht): They were speaking in loud voices, I take it?

A. He spoke pretty loud; he could hear it.

Q. You were sure he could hear it?

A. Yes.

Q. Did you say anything to Mr. Carter?

A. I didn't say a word to him.

Q. Did Mr. Carter say anything to you?

A. Not a word.

Q. Did Mr. Carter say anything to Mr. Gleichman? A. Not that I know of.

Q. Did he say anything to Mr. Bopp?

A. Not that I know of.

Q. What was the date of this thing?

A. I would say about a week before I got suspended.

Q. That would be a week prior to September——

A. August, August.

Q. A week prior to September 1? And you left on August 26? Would you say it was August 26 it happened, on a Thursday?

A. No, I couldn't. He didn't check my book then.

Q. You stated it happened a week before you got your letter of suspension. You had your letter of suspension September 1, didn't you?

Mr. Rowell: He testified August 31 he got——

Mr. Hecht (Interposing): All right.

(Testimony of Nick Tate.)

Q. (By Mr. Hecht): This happened a week before you got your letter of suspension, which was August 31, so could it have been August 26?

A. I got suspended August 30. I got the letter——

Q. (Interposing): On the 31st?

A. On the 31st.

Q. All right. Now, you say this conversation took place——

A. (Interposing): The third week of August, around the middle, the third week of August, I would say.

Q. The third week of August. Well, the third week of August was the week of the 20th. Is that when it occurred, some time between the 20th and the 26th?

A. Well, I couldn't tell you the exact date, when he was checking the books around there.

Q. What was it again he said you were? An A. F. of L. organizer?

A. He said I was an A. F. of L. organizer.

Q. Were you? A. Sure I was.

Q. (By Mr. Edises): Mr. Tate, may I be so bold as to ask you: Are you a member of the A. F. of L. at the present time? A. Yes, sir.

Q. When did you join the A. F. of L.?

A. August 30.

Q. August 30? [471] A. Yes, sir.

Q. 1945? A. Yes, sir.

Q. And during the third week of August you

(Testimony of Nick Tate.)

have testified that you were an organizer for the A. F. of L.?

A. Well, I was talking about the A. F. of L.

Q. What were you doing for the A. F. of L.?

A. Well, I don't know if you want to call it organizer or not, but I was just discussing the things, what the CIO had done to the shop stewards.

Q. Were you signing people up in the A. F. of L.? A. No, sir.

Q. When did you get your A. F. of L. book?

A. I didn't get an A. F. of L. book yet. I got receipts. I didn't get it.

Q. When did you start paying dues to the A. F. of L.? A. August 30.

Q. August 30. Just how did you join, what did you do?

A. I signed one of them application blanks that they——

Q. Who gave you the application blank to sign?

A. I can't recall.

Mr. Royster: I wonder if that is material, Mr. Examiner. I will object to it on the ground it is not.

Mr. Edises: Well, there is a charge here that this man was discharged on account of his membership in the A. F. of L. [472] and activities in the A. F. of L. Now, what could possibly be more material to the issues of this case?

Trial Examiner Ruckel: Let's find out when he joined, if possible.

Q. (By Mr. Edises): Now, who gave you this card to sign? A. I can't recall.

(Testimony of Nick Tate.)

Q. Where was it handed to you?

A. How is that?

Q. Where was it handed to you? Where did you sign it? Whereabouts were you?

A. At that meeting we had there August 30.

Q. At what meeting was this?

A. August 30.

Q. Where was the meeting held?

A. At Finnish Brotherhood Hall.

Q. Are you sure you are not referring to July 30?

A. Oh, yes, that is it, July 30.

Q. Oh, I see. Now, you joined the A. F. of L., you say, on July 30 at this meeting where the resolution was passed that "Unless the Stewards go back to work, nobody goes to work"; is that right?

A. Yes, sir.

Mr. Rowell: If he can remember.

Mr. Edises: Now, just a minute, Mr. Rowell; just a minute! This is a very positive witness. One of the most [473] positive witnesses we have had so far.

Q. (By Mr. Edises): You are very clear on that recollection, are you?

A. Well, it is about—state that question again.

Mr. Edises: I will ask the reporter to read it.

(The question referred to was read by the reporter.)

Q. (By Mr. Edises): In other words, I just want you to be sure you know what you are talking

(Testimony of Nick Tate.)

about. Do you want to let the answer stand? Is that right?

A. No, I can't—I didn't get the question very good yet.

Q. Now, you want to take your answer back?

Mr. Rowell: Well, obviously it is not clear as to the date he joined the A. F. of L. If you want to find out, if you want to help him out, if you want to refresh his recollection by receipts and so forth, we will furnish them to you.

Mr. Edises: Let's see how good his recollection is.

Q. (By Mr. Edises): Were you ever initiated into the A. F. of L.? A. No, sir.

Mr. Rowell: That is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): What? A. No, sir.

Q. Do you know whether anybody else was ever initiated into the A. F. of L., any of these other people? [474]

A. I don't know a thing about it.

Q. When was the last time you attended an A. F. of L. meeting?

A. I couldn't—let's see. I can't think of the date right now.

Q. Yes. As a matter of fact, you have never attended an A. F. of L. meeting, have you?

A. I never did?

Q. Yes. A. I did.

(Testimony of Nick Tate.)

Q. With the exception of that one on July 30, is that right?

A. Oh, I have attended them.

Q. Now, just wait a minute. You attended one on July 30, is that right? A. Yes.

Q. Did you ever attend another?

A. I went to the meeting—they had the next meeting on July——

Q. July 31? A. The 31st, yes.

Q. Did you ever attend any others?

A. Yes, sir.

Q. When?

A. Well, the meeting times, when they met.

Q. Well, when did they meet? [475]

A. I think it is on the first and third week of each month.

Q. You are not sure of that, are you?

A. Well, I wouldn't say for sure.

Q. And when was the last time you attended such a meeting? Did you attend any, have you attended any during February of this year?

A. I couldn't——

Mr. Royster: I will object to that. What difference does it make whether he attended any meetings in February of this year or not.

Mr. Edises: We have a right to test his recollection.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Your answer is you don't recall? A. I don't recall.

(Testimony of Nick Tate.)

Q. Do you recall attending any in January, 1946? A. I don't recall.

Q. Do you recall attending any in December, 1945? That is the same month that Christmas comes in? A. I don't recall.

Q. Do you recall attending any in November, 1945? A. November?

Q. November, 1945? A. I don't recall any.

Q. Do you remember attending any in October, 1945?

A. Well, I went to one of them, but I couldn't tell you [476] the date when I went to the meeting.

Q. Yes. Do you remember attending any in September, 1945?

A. Well, I couldn't tell you the date.

Q. What is the number of the A. F. of L. local that you belong to? A. 233.

Q. And what is the full name of it?

A. International Chemical Workers Union.

Q. Have you got a union card, A. F. of L. Chemical Workers Union card? A. No, sir.

Q. Did you ever get one? A. No, sir.

Q. Have you got an A. F. of L. button?

A. Not in my pocket, no.

Q. Did you ever have one?

A. I have the one I had in the plant.

Q. Yes. Have you got an A. F. of L. union dues book? A. No, sir.

Q. Did you ever get one? A. No, sir.

Q. One was never issued to you?

A. No, sir.

(Testimony of Nick Tate.)

Q. What are the dues in the A. F. of L. union?

Mr. Rowell: That is immaterial, Mr. Examiner, utterly [477] immaterial.

Trial Examiner Ruckel: He may answer.

A. $2.00 a month.

Q. (By Mr. Edises): $2 a month?

A. Yes, sir.

Q. When did you last pay dues to the A. F. of L. Union?

A. I think it was in October, I think.

Q. That was the last time you paid dues?

A. October or November.

Q. October or November? A. Yes.

Q. You were paid through October-November. When did you pay those dues?

A. In November.

Q. In November?

A. I wouldn't say for sure.

Q. When was the first time that you paid dues in the A. F. of L.? A. The day I joined.

Q. Where does the A. F. of L. local hold its meetings?

A. In the Finnish Brotherhood Hall.

Q. At the Finnish Brotherhood Hall. Who is the President of the Local?

A. Ed Thompson.

Q. Ed Thompson. Who is the Vice President?

A. I can't think of who it is.

Q. Who is the Secretary?

A. I don't know her name.

(Testimony of Nick Tate.)

Q. Who is the Treasurer?

A. I don't know her name.

Q. Have you ever seen a copy of the constitution of the Local? A. No, sir.

Q. Were you ever a member of an organization called the Employees Welfare Association?

A. Yes, sir. Well, that is what we were supposed to be in the first place, started out with.

Q. When did you join that organization?

A. I can't recall when.

Q. As a matter of fact, it was in April, 1945, wasn't it?

Mr. Rowell: Well, now, counsel, that is an attempt to mislead.

Mr. Edises: This is cross-examination.

Mr. Rowell: It is an attempt to cross up the witness. Are you looking for the truth in this case, or are you trying to cross people up?

Mr. Edises: I am certainly looking for the truth.

Trial Examiner Ruckel: Sustained.

Mr. Edises: I won't comment on how much success I am having. [479]

Mr. Rowell: I don't think you have had any, but you are trying awfully hard.

Mr. Edises: Well, I am glad that is on the record. I think that is all.

Trial Examiner Ruckel: Any further questions?

(Testimony of Nick Tate.)

Redirect Examination

By Mr. Rowell:

Q. Mr. Tate, the A. F. of L. union issues receipts for your dues, is that right?

A. Yes, sir.

Q. It doesn't issue books? A. No books.

Mr. Rowell: No further questions.

Mr. Hecht: Subject to correction by counsel. I am going to make a motion to strike. I believe the witness, Mr. Tate, testified that in the presence of Mr. Carter, Mr. Gleichman said that he was an A. F. of L. organizer and asked to look at his dues book. I don't see the materiality of that testimony or how it is in any way part of this case, and I move to strike.

Trial Examiner Ruckel: Motion denied.

May it be stipulated what Mr. Carter does?

Mr. *Carter*: He will be here, Mr. Examiner. I would rather have him here and have him explain what his duties are.

Trial Examiner Ruckel: All right, sir.

Any further questions of this witness? [480]

Mr. Royster: None.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Edises: Could I have a look at that dues book or whatever it is, and examine it?

(Mr. Rowell handed the document to Mr. Edises.)

Mr. Royster: Ophelia Reyes.

OPHELIA REYES

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Ophelia Reyes, 2229 6th Street, Berkeley.

Q. Did you come to the gate of respondent's plant on August 31? A. Yes, I did.

Q. Will you tell us what happened there?

A. Well, I was going up to the gate. As I turned the corner I could see the gate and there was quite a few—there was a crowd out there, and it seemed as if they were being stopped by some of the men, the union men. And I went up there and this—I don't know who he is, but I would recognize him.

Q. Well, do you see him in the room now? [481]

A. No, he isn't in here.

Q. Have you seen him in this hearing room at any time? A. No.

Q. All right.

A. I went up to him and he asked me, "Have you got your CIO book," and I said "No." He says, "Well, you can't go in," so he says, "I could get in if I went home and brought my book up." So I stood in line a while, and I finally decided I had better do that, so I went home and I came back with my book. And I attempted to show it to him but he wouldn't look. He said I couldn't go in because I was A. F. of L.

(Testimony of Ophelia Reyes.)

Q. Well, did you get into the plant that day?

A. No, I didn't.

Q. Did you see Mr. Altman that day?

A. Yes, I did.

Q. And where did you see him?

A. Well, while we were standing there at the group talking to him, Mr. Altman came up and we asked him why we couldn't go in. He said we couldn't go in because we were A. F. of L.

Mr. Hecht: May I have that repeated, please? May I have that read?

(The answer referred to was read by the reporter.)

Q. (By Mr. Royster): Now, Miss Reyes, when you say you were standing there talking to "him," who do you mean?

A. Well, one of the fellows out there. [482]

Q. You mean one of the ILWU men?

A. Yes, one of the ILWU men.

Q. Are you talking about the man who checked your book? A. The same man.

Q. And you and others were standing in conversation with him? A. Yes, sir.

Q. Now, where did this conversation take place with respect to the gate?

A. Well, it was quite a distance away, almost, I would say, approximately half way up the block.

Q. Half way up the block from the gate?

A. Yes.

Q. And it was outside the company's property?

A. Oh, yes.

(Testimony of Ophelia Reyes.)

Q. Then is it your testimony that Mr. Altman came up and joined this group? A. Yes, sir.

Q. You know Mr. Altman when you see him, do you? A. Yes, I do.

Q. And Mr. Altman asked this ILWU man why you could not go in?

A. Why the group of us couldn't go in.

Q. And then you testified as to what the ILWU man answered? [483] A. Yes.

Mr. Royster: That is all.

Cross-Examination

By Mr. Hecht:

Q. Have you seen this ILWU man in this hearing room? A. No, I haven't.

Q. What does he look like?

A. Well, he is slender and he is dark, and he wears a discharge button.

Q. Does he look like this gentleman over there (indicating Mr. Gleichman)? A. No.

Q. About what time of day was this, Miss Reyes?

A. What time of day? Well, it was in the morning.

Q. August 30? A. August 31.

Q. Was it August 31?

A. I believe it was.

Q. Do you know Mr. Altman?

A. I know him when I see him.

Q. Did you see him here today? A. No.

Q. Will you be surprised if I told you that Mr.

(Testimony of Ophelia Reyes.)

Altman was sitting in this room for about two hours, right over there (indicating)? [484]

A. I would be if you told me that.

Mr. Hecht: That, I think, was the fact, Miss Reyes. That is all.

Mr. Rowell: Well, describe the hearing room, if you want to get the situation in the record.

Redirect Examination

By Mr. Rowell:

Q. Is it true that there is a certain crowd of people in the hearing room, Miss Reyes, you have been sitting somewhat in the center of that crowd?

A. Yes, I have.

Q. What time did you come into the hearing room today?

A. It was a little after two, I believe.

Q. In the afternoon? A. Yes.

Mr. Edises: We will stipulate that Mr. Altman merged perfectly into the background. Perhaps we can stipulate to something like that.

Mr. Rowell: Good; I will stipulate to that, too.

Mr. Edises: Blended with the color of the walls.

Trial Examiner Ruckel: Does somebody else want to question the witness?

Mr. Edises: I have some further questions.

Trial Examiner Ruckel: I am sorry.

Mr. Edises: I was just proposing a stipulation.

(Testimony of Ophelia Reyes.)

Recross Examination

By Mr. Edises:

Q. Miss Reyes, are you a member of the A. F. of L. Chemical Workers Union?

A. Yes, I am.

Q. When did you join? A. The 6th.

Q. Of what? A. Of August.

Q. What year? A. '45.

Q. 1945? A. Yes.

Mr. Edises: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Catano Periera.

CATANO PERIERA

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Catano Periera.

The Reporter: Will you spell your last name, please?

The Witness: P-a-r-a-e-r-a. [486]

Mr. Rowell: I think he spelled it in Spanish. It is spelled, isn't it, P-e-r-i-e-r-a?

The Witness: Yes.

Mr. Rowell: You were pronouncing the letters in Spanish.

(Testimony of Catano Periera.)

Q. (By Mr. Royster): Did you come to work on July 31? A. Yes.

Q. At what time?

A. I started at three o'clock.

Q. In the morning? A. Afternoon.

Q. In the afternoon. And what did you find?

A. I go in my locker room, choose my clothes, I go start to work. I hear everybody go out to meeting.

Q. So you didn't go to work that day?

A. I work that night.

Q. You work that night?

A. Until eleven o'clock.

Q. Then on August 1 and August 2 you did not work, did you?

A. The 2nd I came to work at two o'clock, everything closed. I go home.

Q. So you go home? A. I go home.

Q. Did you sign a card for the A. F. of L.?

A. Yes. [487]

Q. About when did you sign?

A. About the 6th of August.

Q. The 6th of August? A. Yes.

Q. Do you know Charles Grube? A. Yes.

Q. Did you have a conversation with Charles Grube? A. Yes.

Mr. Hecht: Time, please?

Q. (By Mr. Royster): And when did this conversation take place?

A. In the department.

Mr. Rowell: He asked where?

The Witness: In the plant, in the basement.

Q. (By Mr. Royster): When?

A. Well, I don't know exactly. I think on the 9th of August.

Q. The 9th of August? A. Yes.

Q. What was the conversation?

A. I got the badge of A. F. of L. He come with me. He say, "Periera, what you got on my cap?" I say, "My button." He said, "Take that badge off and put the CIO on, or out the room, or you go home."

Mr. Hecht: Could I have that readback, please?

(The answer referred to was read by the reporter.)

Mr. Royster: That is all.

Mr. Edises: Was that person identified, Mr. Royster?

Mr. Royster: Yes. It was Charles Grube.

Mr. Hecht: August 9?

Mr. Royster: Yes.

Mr. Hecht: I will confess my inability to cross-examine the witness, Mr. Royster, so I have no cross-examination.

Mr. Rowell: Don't you speak Spanish?

Mr. Hecht: Yes, but unless you get an interpreter, it will be pretty hard.

Cross-Examination

By Mr. Edises:

Q. Mr. Periera, when did you join the A. F. of L.? A. The 6th of August.

(Testimony of Catano Periera.)

Q. August 6? A. Yes.

Mr. Edises: Mr. Royster, is this witness one covered by our stipulation?

Mr. Hecht: I think so.

Mr. Royster: No, I think he is not for the reason he did not go to the meetings and he tried to go to work.

Mr. Edises: Well, my question is, is he one covered by our stipulation? Now, it may be that——

Mr. Royster (Interposing): Wait a minute! We excepted certain of them from the stipulation, and he was one.

Mr. Rowell: He was covered by the stipulation, but there were three men excepted from a certain statement in the stipulation.

Mr. Edises: That is what I want to know. Is he one of the three?

Mr. Hecht: Rigo was excepted, so was Mrs. Schneider.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Royster: He was one of the three excepted.

Q. (By Mr. Edises): Did you work on July 30, 1945? A. Yes.

Q. Did you go to the meeting in the afternoon at the Finnish Brotherhood Hall?

A. No, I work.

Q. Did you know about the meeting?

A. Yes.

(Testimony of Catano Periera.)

Q. Did they tell you what happened at the meeting, anybody tell you? A. No.

Q. You knew that on the afternoon of July 31 a lot of the workers went away from the plant, walked out? Do you know that? [490]

A. In the time I come to work.

Q. When did you find that out?

A. In the plant.

Q. And you learned that they were out on a strike, huh? A. Yes.

Q. And what did you do after you learned that? No, just a minute.

Did you learn why they were out on strike?

A. What do you mean?

Q. Did you learn that they were out on strike because the company wouldn't take the Stewards back? A. Yes.

Q. You knew that? A. Yes.

Q. What did you think about that?

Mr. Rowell: Well, now, that is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Did you stay out after that? Did you stay out with the other people?

A. Yes, sir.

Q. When did you go back?

A. On a Friday.

Q. What day was that? A. The 4th. [491]

Q. And you stayed out with the rest of them?

A. Yes, sir.

(Testimony of Catano Periera.)

Mr. Royster: The 3rd is a Friday.

Mr. Edises: Well, off the record, please.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: To clear up a misunderstanding developed previously, it is stipulated that Mr. Periera was one of the persons who participated in the strike, or rather, the work stoppage which occurred from July 31 to August 3, 1945.

Mr. Royster: Agreed for the Board.

Mr. Rowell: So stipulated.

Mr. Hecht: And also may it be stipulated that he is also one of the men who pleaded guilty at the so-called trial of December 17, 1945?

Mr. Rowell: I think we already have.

Mr. Royster: We have already stipulated it as a fact he did plead guilty.

Mr. Hecht: Yes.

Mr. Edises: Yes, I think that is true. I have no other questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

Mr. Royster: Thank you, Mr. Periera.

(Witness excused.) [492]

Mr. Royster: Ina Mae Paige.

INA MAE PAIGE

called as a witness by and and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Ina Mae Paige.)

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Ina Mae Paige, 1460 66th Street, Emeryville, California.

Q. Did you sign a designation card for the A. F. of L.? A. Yes, I did.

Q. Do you know what date you signed it?

A. I think it was around August 4.

Q. 1945? A. Yes.

Q. Did you come to the gate of respondent's plant on August 31? A. Yes, I did.

Q. And did you enter?

A. No, I did not.

Q. Will you tell us what happened?

A. Well, just as we were driving into the gate, I was stopped by a number of members. I remember this fellow here (indicating). I don't know his name. [493]

Mr. Royster: Let the record show that the witness has indicated Mr. Gleichman.

The Witness: Yes. And he stopped me and he asked me for my book. Well, I didn't have the book, my CIO book, black book. So he says I couldn't go in. And I asked him if I returned home and got the book if I could go to work, and he said, "Yes, so I did so," and when I came back he, well, he ignored the fact that I had my book and wouldn't let me go in. Then I asked, "Why?" I asked him if we looked like a bunch of criminals, and in the meantime he said he asked one of the

(Testimony of Ina Mae Paige.)

higher officials why, and he said that this one stated —now, let's see how was it again?

Mr. Hecht: May I have that clarified? Who asked what high official?

Trial Examiner Ruckel: Mr. Gleichman said he had asked some higher official?

The Witness: Yes. That he had asked one of the higher officials.

Trial Examiner Ruckel: In what? The Union or the company, did he say?

The Witness: The company. And he said that he told them that was because we had the guts to say what we were for and the rest didn't. I asked him why the rest were in and we was not, that is the way it was, why we were stopped at the gate.

Trial Examiner Ruckel: I can't get it.

Mr. Edises: I would be willing to consent that Mr. Royster can lead this witness in the interest of clearing up this confusion.

Trial Examiner Ruckel: Let's have the answer read.

(The answer referred to was read by the reporter.)

Mr. Royster: Well, let me question the witness here.

Mr. Edises: Go ahead.

Q. (By Mr. Royster): Now, Miss Paige, when you returned with your dues book you attempted to submit it to Mr. Gleichman, did you?

A. Yes.

(Testimony of Ina Mae Paige.)

Q. And I believe you testified that he did not appear interested in looking at it then?

A. No.

Mr. Rowell: You mean by that he did not appear interested?

The Witness: No, he did not seem interested when I returned with my book.

Q. (By Mr. Royster): Now, were you able to get in the plant? A. No.

Q. On your second attempt? A. I was not.

Q. And who stopped you? [495]

A. Well, there were any number of members out there.

Q. Yes.

A. There was this tall fellow. I don't know—I think it is the same one the other girl was referring to, and this fellow (indicating Mr. Gleichman) is the only one I really recognized.

Q. Now, when you came back with your book you took it to Mr. Gleichman, and still you were unable to get in the plant? A. Yes.

Q. Did Mr. Gleichman tell you why you couldn't go in the plant?

A. No, I don't believe he did.

Q. Did you ask him why you were kept out of the plant?

A. Yes, that is when this answer came in about——

Q. (Interposing): All right. Now, what did he say to you? A. Well, I asked——

(Testimony of Ina Mae Paige.)

Mr. Edises (Interposing): Just a moment. May I suggest that you ask the witness to, instead of using the proper noun "he" use proper names of the parties?

Mr. Royster: Yes.

Q. (By Mr. Royster): All right. What did Mr. Gleichman say then?

A. I asked—you mean when I asked him why we were not permitted to go in? [496]

Q. Yes.

A. Well, he says, "One of your higher officials"—that was the company officials—"had just asked him——"

Mr. Hecht: Now, may I interrupt? Did he say "one of your higher officials," or did he say "one of the company officials?"

The Witness: One of the higher officials, he said. Those were the words.

Mr. Hecht: All right.

Trial Examiner Ruckel: Said——

The Witness: He said he told him it was because we had the guts to say what we were for, that is when that came in.

Trial Examiner Ruckel: Mr. Gleichman said one of the higher officials had told him, Mr. Gleichman?

The Witness: Yes.

Trial Examiner Ruckel: What?

The Witness: That we had the guts to say what we were for and the rest didn't.

(Testimony of Ina Mae Paige.)

Q. (By Mr. Royster): Did you see Mr. Altman this day? A. Yes, I did.

Q. And did you have a conversation with him?

A. Well, I also asked Mr. Altman why we were out.

Mr. Hecht: Where, please?

The Witness: Outside the gate.

Q. (By Mr. Royster): No, where did you have the conversation [497] with Mr. Altman?

A. Oh, Mr. Altman was inside the gate and I was outside.

Q. And did you talk to him through the gate?

A. Yes, I did.

Q. And what did you ask him?

A. I asked him why we was not in and the rest of the girls—there were two girls that were out at the time, they were allowed to enter and we were not, and I asked him why.

Q. Yes.

A. So he said he would go see, but he never returned.

Q. I see. Were you wearing an A. F. of L. button when you came to the gate?

A. Not when I entered the gate, but before I left there I did.

Mr. Royster: No further questions.

Mr. Hecht: Mr. Examiner, I move the testimony of this witness be stricken as having no bearing, materiality or otherwise in the issues in this case.

Trial Examiner Ruckel: Motion denied.

Mr. Hecht: I have no questions.

(Testimony of Ina Mae Paige.)

Cross-Examination

By Mr. Edises:

Q. Miss Paige, had you been particularly active in the A. F. of L., more so than other people in the plant? A. Oh, I don't think so. [498]

Q. You didn't do any more than anybody else, is that right? A. No, I did not.

Q. You wore your A. F. of L. button?

A. Part time; in fact I don't think I was as active——

Q. (Interposing): And a lot of people, a lot of other people wore their A. F. of L. button, too, didn't they? A. They sure did.

Q. And not all of those were let go?

A. No.

Q. Isn't that right? A. Yes.

Q. Do you recall any particular thing that you did that would make you outstanding as an A. F. of L. member, more outstanding or more prominent than anybody else?

A. I do not. I more or less felt that they just culled me out because they could keep me out.

Q. Now, just a moment. I didn't ask you for your opinion as to what you more or less felt.

I ask that go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Edises): Can you think of a single thing that distinguishes you in any way from any of the other persons in the plant who joined

(Testimony of Ina Mae Paige.)

the A. F. of L. in regard to your union activities?

A. You mean that they should keep me out?

Q. Yes. A. I do not.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Alden Lee.

ALDEN LEE

called as a witness by and on behalf of the National Labor Relations Board, being first duly ~~sworn,~~ was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Alden Lee, 1207 Alston Way, Berkeley.

Q. Did you approach the gate of respondent's plant on August 31, Mr. Lee? A. I did.

Q. Well, tell us what happened there?

A. Well, I was stopped by a Mr. Duarte and another man—I don't know what his name was. The man said, "I want to see your book." I said, "My book?" He said, "Yes." So I handed Mr. Duarte the book, and he checked it over, and I went in through the gate. [500]

Q. Now, was there anyone at the gate when you went in?

A. Mr. Carter was there. Also Mr. Altman was standing in a little ways.

(Testimony of Alden Lee.)

Q. Did you have any conversation with Mr. Carter?

A. Yes. I asked Mr. Carter what the hell was going on around here.

Q. And did Mr. Carter reply?

A. He just laughed.

Q. You went on into work then, did you?

A. I did.

Q. And did you later have a conversation with Mr. Gleichman?

A. They came around about two hours later.

Q. Who is "they?"

A. They wanted to check my book again.

Q. I mean who is "they?" A. Pardon?

Q. You say "they came around."

A. Mr. Squires and Mr. Gleichman.

Q. Mr. Squires and Mr. Gleichman?

A. That is right.

Q. All right. And what happened when they came around?

A. They wanted to check my book again.

Q. And what did you say?

A. I told them, "Why, you already checked it once this [501] morning."

Q. And did they make any reply to that?

A. Mr. Squires did. He said, "Well, you are still wearing that button."

Q. And were you wearing a button?

A. Yes, sir.

Q. What kind of a button? A. A. F. of L.

(Testimony of Alden Lee.)

Q. And did Mr. Gleichman have anything to say?

A. He asked me if I knew what I was doing.

Q. Was there any further conversation?

A. Well, I said, "Yes," and he asked Mr. Squires for my name.

Q. Yes. And was that all that occurred?

A. That was all.

Mr. Royster: That is all.

Mr. Hecht: I move to strike on the same grounds, Mr. Examiner.

Trial Examiner Ruckel: Motion denied.

Mr. Hecht: No further examination.

Cross-Examination

By Mr. Edises:

Q. Mr. Lee, are you a member of the A. F. of L. Chemical Workers Union? A. I am.

Q. When did you join? [502]

A. August 3.

Q. Are you an officer of that organization?

A. I am not.

Q. Are you a member of any committees in that organization? A. No, sir.

Q. Have you ever been? A. No.

Q. Have you ever been outstanding for activities in that organization?

A. I don't think so, no.

Q. Did you play a more prominent part than

(Testimony of Alden Lee.)

other members of that organization in pushing the A. F. of L. Union?

A. Well, I used to hand out leaflets.

Q. Well, so did a great many other employees, didn't they? A. About all.

Q. You weren't any more prominent in that regard than the others, were you?

A. No, I don't think so.

Q. Among others were persons who never were let go, isn't that right?

A. I didn't get that question.

Q. I say a lot of persons who distributed A. F. of L. literature never were let go, isn't that right?

A. I don't know. I can't answer that.

Mr Rowell: Maybe they didn't get caught. [503]

Q. (By Mr. Edises): Did you engage in any activities of any kind which were different or more prominent than that of the other employees in the plant? A. No.

Q. Can you think of any one thing that is different or outstanding about your union activities at the plant? A. No.

Q. As an A. F. of L. member?

A. Just handing out leaflets.

Q. Isn't it a fact, Mr. Lee, that there have been a lot of persons who handled out A. F. of L. leaflets who never were let go? A. I don't know.

Mr. Rowell: Objected to as already asked and answered.

Trial Examiner Ruckel: If he knows, he may answer.

(Testimony of Alden Lee.)

Q. (By Mr. Edises): Do you know?

A. No.

Q. You don't know? A. No.

Q. Do you know of any special reason connected with your union aetivities why you should have been singled out for release?

A. Well, I suppose there is only one reason, the passing out of leaflets, wearing a button.

Q. But it is a fact that there were around 200 A. F. of L. [504] people in that plant, weren't there?

A. Yes.

Q. And practically all of them were their buttons, didn't they? A. No, not all of them.

Q. Well, the great majority of them wore their buttons? A. I wouldn't say that.

Q. How many of them didn't wear their buttons?

A. That is pretty hard to decide. I never did count them.

Q. Would you say that half of them wore their buttons?

A. No, I wouldn't say "half"; about 75, perhaps.

Q. 75 wore their buttons? A. Perhaps, yes.

Q. Do you know whether everybody who wore a button was discharged? A. No, I don't.

Q. You don't know that? A. No.

Q. The fact is, there were a lot who wore their buttons who were not, isn't that true?

A. I don't know.

(Testimony of Alden Lee.)

Q. Was Mr. Carter your superior?

A. Mr. Hutchings was my foreman.

Q. Was Mr. Carter one of your superiors at the plant? A. He is a supervisor, yes. [505]

Q. He is one of your Supervisors then?

A. He is a Supervisor.

Q. Is that the way you were in the habit of addressing your superiors, "What in the hell is going on around here?"

Mr. Rowell: I object.

Mr. Hecht: That was the answer he gave.

Mr. Rowell: Certainly it was, but is it material whether he was in the habit of using that language or not?

Mr. Hecht: That may be the reason Mr. Carter just laughed.

Trial Examiner Ruckel: Let's not have any further comments. Objection sustained.

Mr. Rowell: Maybe I would have said the same thing.

Trial Examiner Ruckel: That may be stricken.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: And no further witnesses.

I have four more witnesses I want to put on in the morning, but they will take a very, very short time.

Mr. Edises: May we have a stipulation as to the

(Testimony of Alden Lee.)

dates that the persons who have not testified joined the A. F. of L.?

Mr. Royster: Yes, I am willing to stipulate to that.

Mr. Rowell: Suppose we just stipulate a certain [506] period.

Trial Examiner Ruckel: Off the record.

(Remarks off the record.)

Trial Examiner Ruckel: Of the record.

Mr. Royster: Mr. Luchsinger.

You have already been sworn.

DAVID LUCHSINGER

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Royster:

Q. Mr. Luchsinger, were you issued a badge during the course of your employment by the respondent? A. I was.

Q. Did you wear that badge? A. No, sir.

Mr. Royster: That is all.

Cross-Examination

By Mr. Hecht:

Q. Did you deny yesterday, Mr. Luchsinger, that you had been issued that badge?

Mr. Rowell: That is objected to. The record speaks for itself.

(Testimony of David Luchsinger.)

Trial Examiner Ruckel: Is there a doubt as to what the record will show? I don't know myself.

Mr. Hecht: My recollection is—— [507]

Perhaps it isn't the clearest in the world—that the witness denied he had a badge, ever had one.

The Witness: If that was the statement, that was a misstatement. I said I was issued a badge but never wore the badge in the plant.

Q. (By Mr. Hecht): Did you say originally you were issued the badge?

A. I said I was issued a badge but I have never worn the badge because I never walked through the gate. I always had a car, I drove in a machine, and I had a sticker on my car to identify, that was issued by the company.

Q. Do you now state that you did not yesterday testify that you had never been issued a badge?

Mr. Rowell: It has already been asked and answered. He stated if he did say it, it was wrong.

Mr. Hecht: He has not answered it.

Trial Examiner Ruckel: Well, the record will show what he said.

That is all.

(Witness excused.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Recess until 9:30 tomorrow morning.

(Whereupon, at 5:10 P.M. an adjournment was taken to Friday, February 8, 1946, at 9:30 A.M.) [508]

[Title of Board and Cause.]

Friday, February 8, 1946.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m. [509]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Rowell: Mr. Examiner, in response to a request by Mr. Edises I have here the Constitution and By-Laws of the International Chemical Workers Union, and I will offer them in evidence, if I may have a stipulation, as A F of L's Exhibit next in order.

Trial Examiner Ruckel: It has been offered?

Mr. Rowell: It has been offered. Mr. Edises is examining it.

Mr. Edises: Are you going to offer that?

Mr. Rowell: Yes, I have offered it.

Mr. Edises: Well, I will stipulate that this appears to be the Constitution and By-Laws of the International Chemical Workers Union.

Trial Examiner Ruckel: You stipulate that it is?

Mr. Edises: I will stipulate that it is.

Mr. Rowell: Good. Thank you.

Trial Examiner Ruckel: It may be received.

Mr. Royster: No objection.

(Thereupon the document above referred to was marked Petitioner's Exhibit 2 and received in evidence.)

Mr. Edises: And I would like to ask Mr. Rowell for a copy of the Constitution and By-Laws of the local. [512]

Mr. Rowell: If they exist I will——

Mr. Edises: (Interposing) Well, can you find out whether they exist?

Mr. Rowell: I will during the next intermission.

Trial Examiner Ruckel: Find out off the record.

Mr. Edises: Will it be stipulated that what I have in my hand is the Constitution and By-Laws and Rules of Order of Warehouse Union, Local No. 6, International Longshoremen & Warehousemen's Union, which were in effect at the time of the events complained of?

Mr. Rowell: (Examining document) Yes, so stipulated.

Mr. Edises: I offer that.

Trial Examiner Ruckel: That will be marked the Intervener's next succeeding number.

It may be received.

Mr. Rowell: No objection.

(Thereupon, the document above referred to was marked Intervener's Exhibit No. 5 and received in evidence.)

Trial Examiner Ruckel: Call your next witness.

Mr. Royster: Call William Howard.

WILLIAM C. HOWARD

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [513]

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. William C. Howard, 141 Ronada Avenue, Piedmont.

Q. Did you sign a designation card for the A F of L, Mr. Howard? A. Yes, sir.

Q. About when did you sign it?

A. I would say about August 3rd, somewhere in there.

Q. Of what year? A. 1944—'45.

Q. Do you know Mr. Hack Gleichman?

A. Fairly well. I have seen him around there.

Q. All right. Did you see Mr. Gleichman in the respondent's plant in the machine shop?

A. Yes, sir, I did.

Q. Now, can you tell us about when you saw him there?

A. Well, it was along in the latter part of August.

Q. Of last year? A. Yes, sir.

Q. Was he having a conversation with anyone?

A. With the machine shop foreman.

Q. And what is the name of the machine shop foreman? A. Victor Petersen.

Q. And could you hear this conversation?

A. Yes, I did. [514]

(Testimony of William C. Howard.)

Q. Was there anyone else present who could hear it other than those you have named?

A. No. The machine shop foreman and I were standing there together when he came up.

Q. What did Mr. Gleichman say?

A. He gave him a whole handful of buttons and told him to put them on the machinists.

Q. What kind of buttons?

A. CIO buttons.

Q. What did Mr. Petersen say, if anything?

A. He just took them and walked away, didn't say anything.

Q. Was there anything said about the A F of L buttons?

A. Well, he wanted them to take off A F of L buttons and put on the CIO buttons, is what I gathered from it.

Mr. Edises: Now, I ask that that go out as the conclusion and opinion of the witness.

Trial Examiner Ruckel: What did he say? Did he say anything about taking off the A F of L buttons?

The Witness: Yes.

Q. (By Mr. Royster): Who did?

A. Gleichman.

Q. To whom did he say this?

A. To Petersen.

Q. And what did he say?

A. Well, Petersen just took the buttons and walked away, didn't say anything. [515]

Q. I mean, what did Mr. Gleichman say?

(Testimony of William C. Howard.)

A. That was all there was to it. He just told him to take—if there was any A F of L buttons to take them off and have CIO buttons put on all of his men.

Q. Did you attend A F of L meetings during the month of August? A. Yes, sir.

Q. Did you attend them directly?

A. Every one of them.

Q. Do you know Charles Grube?

A. I did.

Q. Did you see him near any of these meetings?

A. Practically every one, if not every one; he was out in front with the business agents of the CIO.

Q. Out in front of where?

A. In front of where we met with the A F of L meetings.

Q. Where was he with respect to the entrance to this hall?

A. Well, usually parked across the street right opposite the door, and to one side, right alongside of the door.

Q. Were you in Mr. Railey's office——

Trial Examiner Ruckel: Is he a member of the CIO, do you know?

The Witness: He is a member of the CIO, yes, sir. He is also a foreman in the plant.

Q. (By Mr. Royster): Were you in Mr. Railey's office on [516] September 1?

A. I was. I was the first one in there.

(Testimony of William C. Howard.)

Q. Did you have a conversation with Mr. Railey?

A. I did.

Q. Will you tell us what that conversation was?

A. I asked him first what we were brought in there for. He told me to wait a minute, there were some more coming in. After they came in, I believe it was Mr. Altman read this letter from the CIO. After he read it I asked Mr. Railey, I said, "Do you mean to tell me you are going to take orders from the CIO to lay old employees off? Practically all of them have been there years. I know I have."

And he says, "Well, I didn't want you fellows to join a union in the first place. You joined it. Now you got yourself in trouble, get out of it."

Q. Was that a direct conversation between you and Mr. Railey?

A. Directly with me, direct with me. I did the talking and he did the answering.

Mr. Royster: That is all.

Mr. Hecht: Just a moment, please.

As to the testimony relating to the conversation between Hack Gleichman and Foreman Victor Petersen, I move to strike.

Trial Examiner Ruckel: It may stand.

Mr. Hecht: As to the incident of Charles Grube being [517] around there for A F of L meetings I move to strike.

Trial Examiner Ruckel: Motion denied.

Mr. Rowell: Mr. Examiner, I desire to ask one question of this witness similar to one to which ob-

(Testimony of William C. Howard.)

jection was sustained yesterday. Before asking it I want to explain the reason.

This witness, as well as others, has testified to a statement by Mr. Railey, that he did not want them to join a union in the first place, and now that they are in that trouble they could get themselves out of it. Mr. Railey denied having made any such statement, and the reason he gave for the fact that he wouldn't have been likely to do it was that he never fought them, he never fought the union. I wish to ask a question of this witness on that subject.

Mr. Hecht: If you are going into that——

Trial Examiner Ruckel: (Interposing) You will have to file another charge and have an unfair labor practice case.

Mr. Rowell: After all, there has been a conflict in the testimony. It is a matter of believing these witnesses or believing Mr. Railey's statement.

Trial Examiner Ruckel: Whatever this witness said would be his own conclusions.

Mr. Rowell: No. I am going to ask him whether he was present on occasions which strongly indicate—not an opinion. I want to have him testify as to facts. [518]

Mr. Hecht: Mr. Examiner, if that question is permitted, of course I will ask for a recess after Saturday to recall Mr. Railey to rebut any testimony.

Trial Examiner Ruckel: We are not going to do anything that isn't covered by the pleading.

(Testimony of William C. Howard.)

Mr. Edises: Mr. Examiner, I want to say as far as the Intervener ILWU is concerned, we recognize that, of course, the testimony would be irrelevant because it is an impeachment, it is an attempted impeachment on an immaterial point. However, as far as the attempt to show that the company fought the ILWU over a period of years, we would hardly be in a position to deny that there was considerable conflict between the company and the union.

Mr. Hecht: Now, I am not going to subscribe to that statement, Mr. Edises, because in the first place I know nothing about it, and Mr. Railey's information to me is to the contrary.

Mr. Edises: Well, obviously colloquy between us——

Trial Examiner Ruckel: When the witness says "never fought the union" that is his opinion. He is not testifying that he never made this or that particular statement which might be controverted by evidence to the contrary. How are you going to controvert his opinion, that his company never fought the union? Maybe your opinion is that it did, but it still is a question of opinion. [519]

Mr. Rowell: If the facts are so obvious, Mr. Examiner, and I think they are somewhat obvious and very strong——

Trial Examiner Ruckel: Well, I am not going to permit the question. You can ask it if you want to and I will sustain the objection.

(Testimony of William C. Howard.)

Mr. Rowell: Well, I won't ask it then. No further questions.

Mr. Hecht: I have no questions of the witness. Oh, yes, one question.

Cross Examination

By Mr. Hecht:

Q. Mr. Howard, did you on December 17, 1945, attend something that has been described as a trial or hearing on charges brought against you by the ILWU? A. What date?

Q. December 17, 1945?

Mr. Rowell: We will stipulate that that was the date.

A. I attended a trial that I was called to by the advice of the attorneys I appeared before but did not stand trial.

Q. (By Mr. Hecht): You didn't stand trial?

A. No, sir.

Q. Have you since that date received a notice that you have been expelled from the ILWU?

A. No, I haven't, but I have had information that I was expelled.

Mr. Hecht: That is all. [520]

Trial Examiner Ruckel: Any further questions?

Mr. Edises: Yes.

Q. (By Mr. Edises): How long were you a member of the ILWU, Mr. Howard?

A. All the time it has been in the plant. I was there before any union came in the plant.

(Testimony of William C. Howard.)

Q. How long, then, have you been a member of the ILWU or its predecessor?

A. Well, I don't know. I went in when the plant was taken. I don't know the date.

Q. Were you there when Charlie Grube was an ordinary employee, not a foreman?

A. I was on the committee with him, he and I were on the same committee there together. He was the head shop steward and I was a steward.

Q. Head shop steward for the ILWU?

A. Yes, sir.

Q. Charlie was one of the founders of the union at Peet's, wasn't he?

A. He and I were, and the man I mentioned, Victor Petersen.

Q. And isn't it a fact that Charlie Grube and yourself and, well, several other employees, were actually the leading spirits, the leading spirits in the ILWU? A. No. [521]

Q. At the plant?

A. Not of the ILWU. We started it around there before we went into the ILWU.

Q. I understand that. What I mean is that as far as union organization at the plant is concerned, both in the ILWU and the organization, which was the parent, so to speak, of the ILWU——

A. (Interposing) Yes.

Mr. Rowell: Well, let's don't be mysterious about that organization. It was the ILA, A F of L, wasn't it?

Mr. Edises: All right, ILA.

(Testimony of William C. Howard.)

Q. (By Mr. Edises): You and Charlie Grube and a number of others were the pioneers in organization at the plant, isn't that true?

A. That is right.

Q. And isn't it a fact that until he was made foreman of this department Charlie Grube was always in some office or on some committee?

A. Yes, that is true.

Q. In the union? A. That is true.

Q. Do you know what Mr. Petersen did with these buttons that Mr. Gleichman handed him?

A. I don't remember.

Q. Well, now, will you explain that, please? Did you [522] once know and have now forgotten?

A. Yes.

Q. You once knew and you have now forgotten?

A. I have forgotten it, yes.

Q. All right. What did you know before you forgot it?

Mr. Rowell: Well, now——

Trial Examiner Ruckel: (Interposing) Objection sustained.

Mr. Edises: Will you read the last statement of the witness?

Mr. Hecht: I think, Mr. Examiner, that it is obvious from the demeanor of the witness that he is refusing to answer. I think he should be instructed to answer.

Mr. Rowell: His demeanor doesn't impress me that way at all. He has been a very cooperative witness.

(Testimony of William C. Howard.)

Mr. Edises: Mr. Examiner, I want to ask that colloquy of this kind be dispensed with, especially when counsel is in the act of examining the witness.

Mr. Rowell: Certainly. When Mr. Hecht makes a comment as to the demeanor of the witness I am entitled to make a comment also.

Mr. Edises: Mr. Examiner, haven't I the right to continue with my examination?

Trial Examiner Ruckel: Yes. The objection to the particular question was sustained.

Mr. Edises: I had a request to the reporter. I would like to have the last statement of the witness read in answer to my question, the question and answer.

(The question and answer referred to were read by the reporter.)

Mr. Edises: That is the answer I wanted.

Now, Mr. Examiner, I submit it is flying in the face of common sense to overlook the fact that this witness is being deliberately condemnatious and obstreperous.

Mr. Rowell: Well, now——

Mr. Edises: Now, just a minute, Mr. Rowell, I am still making my point.

Trial Examiner Ruckel: Let counsel finish his statement.

Mr. Edises: And I am going to ask the Trial Examiner, in view of the witness' statement and his demeanor, that he be instructed to answer my question.

(Testimony of William C. Howard.)

Trial Examiner Ruckel: He cannot answer your question. The last is impossible to answer. If he has forgotten, then he cannot possibly say what his recollection was before.

Mr. Edises: Mr. Examiner, may I point out when I asked him a question as to whether he knew, really knew what had taken place, his answer was "That is my business."

Now, I submit after all this is a——

Trial Examiner Ruckel (Interposing): That was the answer, but it was answered to a question that was not susceptible of being answered. [524]

Mr. Rowell: Ask your question again, Mr. Edises. I am sure he will answer it.

Mr. Edises: All right.

Trial Examiner Ruckel: The question that was asked him, the previous question before that, was what did Mr. Petersen do with the buttons. He said he had forgotten.

Do you mean by that that you have forgotten, or you don't know?

The Witness: I didn't pay any attention. I just walked out. It was none of my affair anyway. He was not talking to me.

Q. (By Mr. Edises): Well, then, your answer is that you don't know?

A. Yes, that is the best answer, sure.

Q. You don't know, in other words, whether he walked into the next room and dumped all those buttons into an ashcan, do you?

A. No, I don't.

(Testimony of William C. Howard.)

Q. Uh huh. And you are not claiming that you saw him passing any of them out, are you?

A. No, I am not. I told you I walked out. I didn't stay to see the proceedings.

Mr. Edises: Yes. Is this witness, Mr. Royster, covered by our stipulation? [525]

Mr. Royster: He is.

Mr. Edises: Yes. That is all.

Mr. Rowell: No questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Hecht: I renew my motions to strike, Mr. Examiner.

Trial Examiner Ruckel: Beg your pardon?

Mr. Hecht: I renew my motions to strike.

Trial Examiner Ruckel: Motion denied.

Mr. Royster: Mr. Richmond.

FRANKLIN L. RICHMOND

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, Mr. Richmond?

(Testimony of Franklin L. Richmond.)

A. Franklin L. Richmond, 1121 Blake Street, Berkeley, California.

Q. Did you sign a designation card for the A F of L? A. I did.

Q. And about when did you sign it?

A. On or about August 3, I believe.

Q. 1945? [526] A. Yes, sir.

Mr. Hecht: May I have that answer, please?

Mr. Royster: "On or about August 3, I believe."

Q. (By Mr. Royster): Did you have a conversation with Mr. Gleichman in the Toilet Articles Department? A. Yes, I did.

Q. When did this conversation take place?

A. I don't remember the exact date.

Q. As nearly as you can place it?

A. It was just about four days, I think, before I was fired.

Q. And when were you fired, as you put it?

A. On or about the 5th of September.

Q. Now, who was present when this conversation took place?

A. Well, at the first part of it there was only he and I.

Q. And did someone else later join you?

A. No. I walked over to my boss, Mr. Carlson.

Q. All right. Well, now, let's have the conversation then that took place between Mr. Gleichman and you with no one else present?

Mr. Hecht: I am sorry to interrupt, Mr. Royster. Who did he say his boss was?

The Witness: Carlson.

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Royster): What was the conversation, Mr. Richmond? [527]

A. I was walking across the floor, and I had my A F of L button on. He spied this button, he walks over and he says, "What in the hell are you doing in here?" and I says, "I am working here," and he says, "How long have you been working?" I says, "About 10 years." He says, "Did we see your book?" and I says, "You did." And he says, "Let me see it."

And that is when I walked over to my boss.

Mr. Edises: Excuse me. Was that conversation supposed to have been with Mr. Gleichman?

Mr. Royster: Yes.

Q. (By Mr. Royster): Well, when you walked over to your boss what did you do?

A. I says, "Mr. Carlson, has this goon got any right to come in here and——"

Mr. Edises (Interposing): What was that?

A. I asked Mr. Carlson if this goon had any right to come in here and demand to see my book merely because I have got a button on. He says, "Well, he can ask to see your book, is all." And I says, "All right, I will go and get it."

Mr. Hecht: You said what?

The Witness: I said, "I will go and get it."

So I went and got the book, and I gave it to him, and he just opened up the back of it and got the number. And he says, "1961, huh?" That is all. And I says, "Now I suppose I will get one of your letters?" He says, "You will!" [528]

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Royster): And did you?

A. I did.

Mr. Hecht: Was Carlson supposed to have been present during this conversation? I can't hear the witness.

Mr. Royster: Well, I think not, but I will get it straight here.

Q. (By Mr. Royster): Was Mr. Carlson present when Mr. Gleichman looked at your book and got the number?

A. No, he was not. The first part of the conversation was approximately 25 feet from where Mr. Carlson was standing, and when I walked over, Gleichman walked over with me, and Mr. Carlson told me he could ask to see my book, so I walked back over to the dressing room, and Mr. Gleichman followed me over. Mr. Carlson stayed over by the packing bench.

Q. Now, were you called to the office of any one of the company's executives a few days after that?

A. Yes, I was. I was called into Mr. Carlson's office.

Q. And what took place there?

A. Well, Mr. Altman, then—before that, a few minutes before, had came along, and he spoke to me and I spoke and I says, "I hear they got your oiler." And he says, "You didn't happen to hear anything about Mr. Richmond, did you?" And I says, "Well, I have been hearing something about it for several days." And he says, "Well, I got a letter this morning that you are no longer in good stand-

(Testimony of Franklin L. Richmond.)

ing and I will have to [529] let you go." And I says, "Well, I have got an order here I am working on that Mr. Carlson asked me to fix for him." I says, "I suppose you have the final say, but Mr. Carlson, being my immediate boss, you go and tell him and let him come and tell me, and that will give me a chance to finish this order."

So he went and told Mr. Carlson, and then Mr. Carlson called me in the office.

Q. Well, did you have a conversation then with Mr. Carlson, or Mr. Altman?

A. Mr. Altman.

Q. In Mr. Carlson's office? A. Yes.

Q. And will you tell us—was Mr. Carlson there also? A. Yes, sir.

Q. Was anyone else there?

A. No. Well, Louie Mueller, the second foreman, did walk in for a few minutes in the middle of the proceedings.

Q. And this took place about the 5th of September?

A. On or about that. I am not exactly sure. I think it was.

Q. And what was the conversation now, who said it, and what did they say?

A. Well, Mr. Altman said that he has been notified that I am no longer in good standing with the Warehousemen's, and [530] having a contract with them he couldn't keep me on the job. And I says, "Well. I am not in bad standing with them." I says,

(Testimony of Franklin L. Richmond.)

"I have my book in my pocket, I can show it to you, that it is in good order."

Mr. Hecht: Mr. Examiner, I am going to move to strike this latter part of the conversation right now. I don't think it is material to this case at all, this man's opinion as to his position in the union.

Trial Examiner Ruckel: Well, let's have the whole conversation.

What else was said?

The Witness: And he says, "well, there would be no point in me looking at your book," he says, "the thing is, we have a contract and we have to live up to it."

Q. (By Mr. Royster): Have you exhausted your recollection as to what else may have taken place?

A. No, I know what he said. I was just trying to think how he said it.

Trial Examiner Ruckel: Well, what was it?

A. Well, he says I am not the only one that is being laid off. He says, "Some of them wanted to see it in writing," he says, "but we tried to refrain from giving it in writing because that makes it seem so final," and he would want to keep it on kind of a temporary basis, if possible, or something to that effect, is the way he put it.

Q. (By Mr. Royster): Is there anything else you remember?

A. Yes. I remember that I mentioned to him that for every one of us that was laid off like that, for wearing those buttons, he was going to have some kind of a charge placed against him. I didn't know

(Testimony of Franklin L. Richmond.)

just what kind it would be, but he would have some kind of a charge against him. Then he led me out to the gate. I haven't been back yet.

Mr. Royster: That is all.

Mr. Hecht: I move to strike, Mr. Examiner, all that testimony referring to conversations with Mr. Altman, and with respect to his removal from employment.

Trial Examiner Ruckel: It may stand. Any questions?

Mr. Rowell: No questions.

Trial Examiner Ruckell: Respondent?

Cross-Examination

By Mr. Hecht:

Q. Mr. Richmond, did you on December 17, 1945, attend a trial or a hearing in Oakland at the Green Room, a trial before the ILWU committee?

A. Well, I went to this——

Q. (Interposing): Call it what you will.

A. I went to this so-called trial. I don't remember the exact date.

Q. It would be around December 17, '45, at any rate?

A. Possibly, but I didn't stand trial.

Q. You just went in and left? [532]

A. Yes.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Just a moment. Mr. Edises?

Q. (By Mr. Edises): Mr. Richmond——

(Testimony of Franklin L. Richmond.)

Mr. Hecht (Interposing): Oh, pardon me. Before you go on, Mr. Edises.

Q. (By Mr. Hecht): Did you subsequently get any notice from the ILWU that you had been expelled from the Union? A. No, I didn't.

Q. Did you hear that you had been expelled from the Union?

A. I heard something to that effect.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Richmond, we have stipulated with your counsel that you were present at this meeting of July 30, 1945, at the Finnish Brotherhood Hall, and that you went along with the actions taken there, and one of those actions, you may recall, was the sending of this notice, telegraphic notice, to the Union and to the company stating that people there were withdrawing from the ILWU and forming this Employees Welfare Association.

You recall that, do you not? A. I do.

Q. When did you change your mind about withdrawing from the ILWU?

Mr. Rowell: That is objected to. [533]

Trial Examiner Ruckel: Just a moment.

Finish the question.

Q. (By Mr. Edises): The question was: When did you change your mind about withdrawing from the ILWU?

Mr. Rowell: That is objected to; there is no testimony to that effect.

Mr. Edises: Mr. Examiner, I submit this wit-

(Testimony of Franklin L. Richmond.)

ness is one of those who, by stipulation, withdrew from the ILWU, and here we find a little while later he is making a to-do about being in good standing, or not being in good standing, and I have a right to ask him——

Mr. Rowell: Well——

Mr. Edises: And I have a right to finish my question, too, Mr. Rowell.

Mr. Rowell: Go right ahead.

Mr. Edises: Will you read back my statement, please?

(The statement referred to was read by the reporter.)

Mr. Edises (Continuing): ——whether or not he changed his mind and when.

Mr. Rowell: That is a legal question, whether the man is in good standing or not. He may happen to have the impression himself that if he pays these dues he is in good standing.

Mr. Edises: Mr. Examiner, I didn't ask him that question. I asked him when he changed his mind.

Mr. Rowell: The question is misleading.

Mr. Hecht: Mr. Rowell, I will enter a stipulation with you that it is a legal question. If it is, what are we doing here?

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: The objection is sustained to the question when he changed his mind, Mr. Examiner.

Trial Examiner Ruckel: Yes.

Mr. Edises: Now I will ask him a further question.

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Edises): Mr. Richmond, did you ever change your mind about withdrawing from the ILWU?

Mr. Rowell: Well, that is the same question, Mr. Examiner. It depends on the legal conclusion of the witness, as to whether or not he actually had withdrawn from the ILWU.

Mr. Edises: Well, Mr. Examiner,——

Trial Examiner Ruckel: There is no question of the legal effect. It is his intention we are concerned with.

Mr. Edises: Certainly.

Trial Examiner Ruckel: He may answer, if he can.

A. Well, I would like to answer with a statement.

Trial Examiner Ruckel: You can.

The Witness: I was against going into the Warehousemen from the beginning, in July of 1941, I never wanted to go into it, and I voted so when our local voted on the question whether or not to go into it. I voted against it. [535]

Trial Examiner Ruckel: Well, that isn't answering the question. Counsel's point is that you approved of this wire which was sent saying that the group was withdrawing from the ILWU, this wire sent at this meeting on July 30. Then we find that as late as September you are still a member of the union because it is not until some time in September that you are expelled. So counsel asked you when it was that you changed your mind.

(Testimony of Franklin L. Richmond.)

Mr. Edises: If he changed his mind.

Trial Examiner Ruckel: If you changed your mind.

Mr. Edises: The question asked when he changed his mind was objected to.

Q. (By Mr. Edises): I am now asking you, Mr. Richmond, if, after this withdrawal telegram in which you concurred on July 30, if you changed your mind after that about belonging to the ILWU?

A. And you mean did I change my mind and want to stay in good standing? Is that your point?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Yes, that is all right. We will put it that way.

A. No, not at all.

Q. Yes.

A. I didn't change my mind, and I didn't give a hoot about being in good standing with the union, as far as that was [536] concerned. It was merely the fact that Mr. Altman was using this as an excuse to fire me.

Mr. Edises: Now, I ask that——

The Witness: And I was merely——

Mr. Edises: Just a minute.

I ask that part about Mr. Altman go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Edises): In other words, if I understand your answer, the telegram of July 30th withdrawing from the ILWU expressed your true wishes and intentions, and you never changed your mind; is that right? A. That is right.

(Testimony of Franklin L. Richmond.)

Mr. Edises: That is all.

Mr. Royster: No questions.

Mr. Rowell: No questions.

Mr. Hecht: Mr. Examiner, in the testimony of the witness on cross-examination I move to dismiss any charges on behalf of this complainant against the respondent.

Trial Examiner Ruckel: Motion denied at this time.

Mr. Rowell: Could I ask one question?

Redirect Examination

By Mr. Rowell:

Q. With regard to that so-called trial that the ILWU had you come to, you testified that you went there and left.

Did you in addition join in that statement which was [537] read in your behalf explaining the reasons why you weren't standing trial? A. Yes.

Mr. Rowell: No further questions.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

Mr. Hecht: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Mr. Navarro.

EDWARD NAVARRO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Edward Navarro.)

Direct Examination

By Mr. Royster:

Q. State your name and address, please?

A. Edward Navarro, 1516 5th Street, Berkeley, California.

Q. When did you go to work for the respondent, Mr. Navarro?

A. Oh, it was in December, on or about the 5th, 1944.

Q. Were you a member of any labor organization when you went to work there?

A. Yes, I was a member of the 1304, CIO Union.

Q. Is that the East Bay Union of Machinists?

A. Yes.

Q. Local 1304? [538] A. Yes.

Q. Now, did you continue your membership in that organization? A. Yes, I did.

Q. Did you sign a designation card for the A. F. of L.? A. Yes, on or about August 3.

Q. 1945? A. 1945.

Q. After signing that designation card did you continue—I will withdraw that.

Did you ever pay dues to Local 1304?

A. Yes, I did, until——

Q. After signing the designation card of the A. F. of L., did you continue to pay dues?

A. Yes, I did.

Q. Did you ever join the ILWU?

A. No, I didn't.

Q. Did you in the month of August, 1945, or

(Testimony of Edward Navarro.)

early September, 1945, make any attempt to transfer to the ILWU?

A. I did. I went and I was refused.

Q. You made an attempt to transfer?

A. I did.

Q. And the transfer was refused?

A. Yes.

Mr. Edises: What was the date of that? [539]

Q. (By Mr. Royster): Can you give us the date that you made this attemot?

A. Well, it was on or about September 4th when I was handed that letter from Mr. Wood that I had to go to Oakland and join the ILWU, about 10 o'clock I was handed that letter, and I went about three o'clock. I went out—they made me go out to transfer, and I met Mr. Smith.

Q. Is that Jim Smith?

A. Yes, and I handed the letter and my book saying that the ILWU tried to transfer me, or else I wouldn't be working at Peet's any longer, and there was another man there from the Machinists Union that said I couldn't be—get any transfer because I was wearing an A. F. of L. button in the plant.

So Mr. Smith handed me the letter and the book back and said that I was washed out. That is all.

Q. So you were never able to transfer to the ILWU? A. No.

Q. And you were taken off the job at Peet's were you not? A. Yes.

Mr. Royster: That is all.

(Testimony of Edward Navarro.)

Mr. Hecht: Off the record, please.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Cross-Examination

By Mr. Edises:

Q. Mr. Navarro, when did you go to work at Peet's? A. On or about December 5, 1944.

Q. And what was your job?

A. Soap blower.

Q. Soap blower? A. Yes, sir.

Mr. Edises: Will it be stipulated that the job that this witness was engaged in was one of those which is covered by the contract between the company and Local 6?

Mr. Royster: I assume that is so. Let's go off the record for a minute.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: Will it be stipulated by counsel for the parties here that the witness Navarro was engaged in an activity, a job which is within the bargaining unit covered by the contract of July 9, 1941?

Mr. Royster: So stipulated.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Q. (By Mr. Edises): Now, Mr. Navarro, what was the date in 1944 that you went to work?

Mr. Rowell: Already asked and answered. [541]

(Testimony of Edward Navarro.)

Mr. Royster: That is the third time now.

Mr. Edises: I am sorry.

Mr. Royster: December 5.

Mr. Edises: December 5.

Q. (By Mr. Edises): Did you apply for membership in ILWU Local 6 on or before December 20, 1944? A. No.

Q. Did you apply for membership in Local 6 at any time after you went to work, and prior to the time that you went to see Jim Smith?

A. No, I didn't apply.

Mr. Edises: I have no further questions, but I wish to direct the attention of the Trial Examiner to Section 3 of the agreement, which is in evidence, which provides that any employee in order to be eligible for employment by the company, and who is within the bargaining unit, must make application for membership within 15 days of their employment in order to have status.

Trial Examiner Ruckel: What is the Board's theory at to this man?

Mr. Royster: That he was left alone, that it was satisfactory for him to belong to the CIO Machinists Union until the time came when he wore an AFL button in the plant, and a question concerning representation arose, and the campaigning got hot, and then they thought they had better get rid of him. [542] I think they are stultified by the fact they let him go for 9 months.

Trial Examiner Ruckel: Isn't that their privilege to let him go?

(Testimony of Edward Navarro.)

Mr. Royster: What is that?

Trial Examiner Ruckel: You claim that is not their privilege?

Mr. Royster: Oh, it is their privilege to let him go for 9 months. They are privileged, of course, never to require him to join the ILWU?

Mr. Rowell: But when he joins the A. F. of L. he is then required to, when he joins in a movement of change of affiliation.

Mr. Hecht: Mr. Examiner, may I point out that the record shows that five of the complainants in this matter were the stewards from the date he went into the employ of the company to July 1, 1945.

Trial Examiner Ruckel: Well, anyway, that is your theory.

Mr. Royster: That is our theory, yes.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: I have a question or two.

Redirect Examination

By Mr. Rowell:

Q. When you went to work there, Mr. Navarro, did you know of this contract the ILWU had with the [543] Company?

Mr. Edises: Objected to as immaterial, whether he knew it or not. The question is one of whether the ILWU had the right under its contract.

Mr. Rowell: That is preliminary, Mr. Examiner.

Mr. Edises: To ask that this man be dismissed.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Did anyone from the

(Testimony of Edward Navarro.)

ILWU come around to you when you were working before this date of September 4th or 5th that you testified to and ask you to join—tell you you had to join a union? A. Yes; Mr. Davies.

Q. Mr. Davies? A. Roy Luchsinger.

Q. Roy Luchsinger? When was that?

A. I couldn't remember exactly, but it was about—two or three months after I started working there, and he called my attention and said, "You better go and join the ILWU." And I went to get my release card from the 1304, and I can't name the two persons that were there, and they said, "Well, if there are four more members of the 1304 in that plant that have not been molested by this union, why could I want any transfer?" "You stay the same way that you are." So I stayed, and nobody bothered me after that in the 1304 because there was four more machinists there, and they never made any [544] attempt to transfer them to the ILWU.

Mr. Hecht: I move to strike all of that, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Mr. Rowell: I think it is perfectly relevant.

Q. (By Mr. Rowell): To your knowledge, are there other members of 1304 still employed there that are not members of the ILWU?

A. Yes, there are three or four of them. I am not sure if there are four, but three there are.

Mr. Rowell: That is all.

Mr. R ster: No questions.

(Testimony of Edward Navarro.)

Mr. Hecht: Mr. Examiner, I move to dismiss all the charges brought on behalf of this complainant.

Trial Examiner Ruckel: Motion denied at the present time.

Mr. Royster? That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Rose Gilbert.

ROSE GILBERT

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please? [545]

A. Rose Gilbert, 2449 Bonner, Berkeley.

Q. When did you go to work for the Respondent, Miss Gilbert?

A. Oh, sometime in September. I don't know when.

Mr. Edises: Will you talk up a little?

The Witness: I went to work at Colgate-Peet's sometime in September.

Trial Examiner Ruckel: Of what year?

The Witness: Of '45.

(Testimony of Rose Gilbert.)

Q. (By Mr. Royster): Could it have been about the 21st of August, 1945?

A. It might be, somewhere around there. I don't know the exact date I started.

Q. Now, will you tell me how you secured employment there?

A. I went down there and put an application in and about——

Q. (Interposing): Went down where?

A. Down to the office at Colgate-Peet's.

Q. Of the plant? A. Yes.

Q. All right.

A. And a few day later they called me up, and I went to work there.

Q. Were you told that you must join any labor organization to work there?

A. No, there was not any stipulation of any kind that the [546] CIO was even in there. I didn't even know they existed, nor did any shop steward or anybody else come around and tell me there was a CIO in there.

Q. Did you join any union when you went to work there?

A. I joined the AF of L after I was there for about, oh, I guess, two or three days.

Q. And did you have an AF of L button?

A. Yes.

Q. What did you do with it?

A. Wore it. I was a member of their union.

Q. Did you wear it in the plant while you were at work? A. Sure!

(Testimony of Rose Gilbert.)

Q. When were you discharged by the company?

A. I can't remember the date.

Q. Could it have been the 13th of September, 1945?

A. It might be that, or a little later. I know I didn't work there very long, not any longer than about two or three weeks, I don't think.

Q. Well, will you tell me the events leading up to your discharge? Did you have a conversation with anyone?

A. Yes, I had a conversation with that guy there in the maroon tie (indicating).

Mr. Edises: You mean Mr. Gleichman?

The Witness: I mean that guy in the red tie. He is no "Mr." to me. [547]

Trial Examiner Ruckel: Just answer the questions. Don't be impertinent. Answer the questions.

Mr. Rowell: Try to hold your temper with regard to Mr. Gleichman.

The Witness: Oh, him? I would like to slug——

Mr. Royster: Well, may the record show that the witness has identified Hack Gleichman as the person with whom she had a conversation?

Trial Examiner Ruckel: The witness has identified Mr. Gleichman.

The Witness: Well, he isn't the one that stopped us outside the gate that day. They stopped everybody going in the gate and asked them if they were a member, and I said, "No," so he told me to stand with another group. I don't know who the men

(Testimony of Rose Gilbert.)

were. And I did, and then another fellow came over and he said, "No, let her go through. I know she is a member of the AF of L, but she has been misled."

So he took down my name, and he wrote "misled" after it, and I went through and I went to work.

Not long after that Gleichman and that guy sitting alongside of him (indicating) came up to me one day and they asked me if I was a member of the CIO, and I said, "No," and he asked me if I was a member of the AF of L, and I said "Yes."

Trial Examiner Ruckel: Did he ask you to join the CIO? [548]

The Witness: Yes. And I told him that I was going to wait until the matters were settled there at the plant. He said as far as he was concerned that I was through working at Colgate-Peet's, and I told him I would come in, and I came in the next day. Then we went to Mr. Wood's office, and he talked to Mr. Wood, and I told Mr. Wood I would join the CIO if they gave me——

Mr. Wood: Speak louder.

The Witness: ——if they gave me the 15 days' notice that everyone else got that was a closed shop. And Gleichman said "No," and Mr. Wood himself turned around and asked Gleichman if I was fired or not.

Who does the firing? You or him?

Trial Examiner Ruckel: That may be stricken. I said, young lady, don't be impertinent on the

(Testimony of Rose Gilbert.)

witness stand. Any further questions of this witness?

Mr. Royster: None.

Mr. Hecht: I have none.

Trial Examiner Ruckel: Have you any further questions?

Mr. Royster: No further questions.

Trial Examiner Ruckel: On what theory is she in the complaint?

Mr. Royster: On the theory, in the first place, she was not notified that there was a closed shop contract existing there. [549]

Trial Examiner Ruckel: Well, that is up to the person that hires her, isn't it?

Mr. Royster: Yes, except the day she was discharged, and, further, there is a substantial question in my mind as to the right of a contracting union, when there is a controversy as to who is the bargaining agent for the employees, to force the employee to join any particular labor organization as a condition of employment.

Mr. Rowell: The question is whether the company has the right to comply with the requests of the contracting union in such a situation when they have been notified of the existence of a question concerning representation among their employees.

Trial Examiner Ruckel: You mean to say that the mere filing of a petition—the petition was filed in August?

Mr. Royster: The petition was filed in August. There had been a hearing on it.

(Testimony of Rose Gilbert.)

Trial Examiner Ruckel: Upholds the operation of the contract, therefore a union could file a petition every week or every month, that automatically would——

Mr. Royster: Not "automatically." There is another question here, whether this girl was given a sufficient opportunity to join the ILWU.

Trial Examiner Ruckel: She said she was asked. It is quite obvious she never intended to, in fact, she practically [550] said she never intended to. That is the way I understood her testimony.

Now, you said you didn't tell them you would join?

The Witness: Yes.

Trial Examiner Ruckel: Who did you tell that to?

The Witness: I told Mr. Wood and Mr. Gleichman.

Mr. Hecht: If they would give you 15 days?

The Witness: If they would give me the 15 days' notice I would join the CIO.

Trial Examiner Ruckel: And what 15 days' notice did you refer to?

The Witness: Well, the 15 days' notice practically anybody gets when they go into a closed shop. You don't have to join any union immediately.

Trial Examiner Ruckel: You didn't refer to any particular 15 days' notice, though?

The Witness: No, just a 15-day notice. And Mr. Wood asked Mr. Gleichman if it was all right, and Gleichman said "No."

(Testimony of Rose Gilbert.)

Trial Examiner Ruckel: Any further questions?

Mr. Hecht: I have no questions except a motion to dismiss all charges brought on behalf of this complainant which, I think, should be granted at this point, Mr. Examiner.

Trial Examiner Ruckel: Motion allowed. [551] You are excused.

(Witness excused.)

Mr. Royster: May we have a few minutes' recess right now? I believe that is all the witnesses I have, Mr. Examiner.

Trial Examiner Ruckel: Recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Does the Board have any further witnesses?

Mr. Royster: No further witnesses, Mr. Examiner. I do have a few more matters that I wish to bring up at this time.

The first is with respect to Board's Exhibit 6. The company has supplied me with a photostatic copy of the telegram which was sent by certain individuals as shown on Board's Exhibit 6, and the photostatic copy differs slightly from the copy of the telegram which is in evidence, and I will ask, if the parties will agree, that this photostatic copy may be submitted now for Board's Exhibit 6.

Mr. Hecht: No objection, Mr. Royster.

Mr. Rowell: No objection.

Trial Examiner Ruckel: Is there any objection, Mr. Edises?

Mr. Royster: Substituting this photostatic copy for the one already in evidence? [552]

Mr. Edises: None at all.

Mr. Royster: It is Board's 6.

Trial Examiner Ruckel: Motion allowed to substitute the document for the one now in evidence.

Mr. Royster: Oh, Mr. Examiner, around the 6th, 7th, or 8th of January, 1946, I requested Mr. Wood to supply me with a list of individuals who had been released from the employment of the company from and including July 30, 1945, to date. And in response to my request Mr. Wood sent me this list through the mail. Included on the list were the names of three individuals who are not named in the complaint, and lines have been drawn through those names.

I offer this list now in evidence.

Mr. Edises: May I see it, please?

Mr. Royster: Yes (handing document).

Trial Examiner Ruckel: With the exception of those names, then, those on the list are identical with those whose names appear in the complaint?

Mr. Royster: Yes.

Trial Examiner Ruckel: What is the purpose of the exhibit, then, Mr. Royster?

Mr. Royster: Well, it shows the period, the date of hiring of these employees, the date when the company's record shows that they were released, and the classification of employment they had with the company. [553]

Trial Examiner Ruckel: You mean it is a little more accurate than——

Mr. Royster: Well, possibly. It serves to expand the information concerning these employees slightly.

Mr. Rowell: In addition to that, Mr. Examiner, because of certain stipulations we haven't called all the witnesses so that there is no evidence in the record as to the fact they actually were discharged except on the basis of this document.

Trial Examiner Ruckel: It may be well to have this so there will be no question of the fact of the discharge.

Mr. Edises: This proposed exhibit, Mr. Examiner, has a heading, "Date released."

I presume that that refers to the date the company removed these people from employment?

Mr. Royster: It is the date they last worked, Mr. Edises.

Mr. Edises: The date they last worked.

Mr. Royster: Or, I think, more accurately the date for which they received pay.

Mr. Edises: Well, now, would you have any objection to substituting for this ambiguous word "released" the statement of fact that you have just given?

Mr. Royster: Not at all; no objection.

Mr. Edises: The date for which they were last paid? [554]

Mr. Royster: Correct.

Mr. Edises: May I have your permission to insert that on the document?

Mr. Royster: It may be changed physically.

Trial Examiner Ruckel: Any objection?

Mr. Rowell: No objection.

Mr. Hecht: No objection by respondent.

Mr. Royster: The date for which last paid.

Mr. Hecht: May I see that for a minute, please?

Mr. Royster: Yes (handing document).

Mr. Hecht (Examining document): No objection.

Trial Examiner Ruckel: What is the exhibit number on that?

The Reporter: Board's 15.

Trial Examiner Ruckel: Board's Exhibit 15 may be received.

(Thereupon the document above referred to was marked Board's Exhibit No. 15 and received in evidence.)

Mr. Royster: Yesterday afternoon, Mr. Examiner, Mr. Edises, counsel for the intervener, requested that I supply him with the dates when the individuals named in the complaint signed application for membership cards in the AF of L. I am now prepared to read that information into the record. [555]

Trial Examiner Ruckel: Go ahead.

Mr. Royster: Harry A. Smith, August 8, 1945; Calixto Rigo, August 6—all dates are 1945.

Mr. Hecht: I beg your pardon?

Mr. Royster: All dates are 1945.

Mr. Hecht: Yes.

Mr. Royster: Manuel Souza, August 8; Harold

Lonnberg, August 3; William Sherman, August 3; Thomas Azevedo, August 3; Martin Heppler, August 3; Sanford Moreau, August 8; Henry Geanarelli, August 3; Clyde Haynes, August 8; Glenn Hixson, August 3; Robert Ashworth, August 3; Ann Cerrato, August 3; Rose Marie Ros, August 3; Lincoln Olsen, August 3; Frank Marshall, August 8; Albert Zulaica, August 3; Vincent Barboni, August 3; Henry Hellbaum, August 6; Felix Denkowski, August 3; Harry Anderson, August 3; Dave Luchsinger, August 3; Sebastian Ramirez, August 3; Edwin H. Thompson, August 3; Genevieve Young, August 3; Kay Norris, August 3; Manuel Alegre, August 7; Manuel Munoz, August 3; Nick Tate, August 6; Catano Periera, August 6; Ina Mae Paige, August 4; Ophelia Reyes, August 6; John Puruca, August 7; Alden Lee, August 3; William Howard, August 3, and Frank Richmond, August 3.

Trial Examiner Ruckel: Anything further, Mr. Royster?

Mr. Royster: That is all for the Board.

Trial Examiner Ruckel: Any motions by any of the parties? [556]

Mr. Royster: No motions at this time.

Mr. Rowell: May it be understood, Mr. Examiner, that the closing of the Board's case does not preclude the charging union from calling a witness or two if it feels so advised?

Mr. Hecht: Oh, no. The Board rests now, I think.

Trial Examiner Ruckel: It is your turn now if you want to call any witnesses.

Mr. Rowell: I mean on the matter of rebuttal, if necessary.

Mr. Edises: Well, Mr. Examiner, I submit that that is entirely a different matter, but as far as the Board's case is concerned, I presume that the charging union has no separate case, and I think we are entitled to know whether they are resting or not?

Trial Examiner Ruckel: Well, you don't intend to adduce any testimony other than what the Board has adduced?

Mr. Rowell: No, only on the matter of rebuttal, possibly.

Trial Examiner Ruckel: Well, the Board can call its own rebuttal witnesses, if you will furnish them to the Board.

Mr. Rowell: I will do that.

Mr. Hecht: Mr. Examiner, there are certain obvious [557] matters I would like to make certain motions to dismiss at this point.

Calling your attention to Paragraph 5, Subdivision 2 of the complaint—ready, Mr. Royster?

Mr. Royster: Yes.

Mr. Hecht: I move to dismiss the following charge, Mr. Examiner, that of "Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards."

I submit there is absolutely no evidence on that point.

Trial Examiner Ruckel: Do you recall any?

Mr. Royster: I recall no evidence on that point, Mr. Examiner.

Trial Examiner Ruckel: Does anybody else recall any?

Mr. Edises: I join in that motion.

Trial Examiner Ruckel: Motion allowed.

Mr. Hecht: Referring also to Subdivision 4 of the same paragraph, the charge "Permitting the ILWU to publish on respondent's bulletin boards, statements that the union members, supporters, or adherents would be discharged."

Mr. Royster: Certainly there was evidence as to that. I will oppose the motion.

Trial Examiner Ruckel: There was some evidence that the notice which warned employees not to attend that meeting [558] was posted on some of the bulletin boards, I believe.

Mr. Royster: There was also evidence that another notice was——

Mr. Hecht (interposing): I mean, if the Examiner will note that the charge is that the respondent, through its officers, agents, and employees—did those things.

Trial Examiner Ruckel: Yes, I know. Motion denied.

Mr. Hecht: Very well.

Directing your attention to Subdivision 3, "Refusing union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours."

The Examiner will recall that the only evidence

in connection with this matter as submitted by the Board is the fact that on one occasion Mr. Howard, Mr. Lachsinger, and Mr. Lonnberg entered the plant without authorization and without complying with company rules and were escorted out by Mr. Carter. There has been no evidence whatsoever that anyone on behalf of the AF of L union asked for permission to enter the plant for the purpose set forth in the charge.

Mr. Royster: Well, they could well believe that it was foolish to ask any such permission, having been——

Mr. Hecht (interposing): There is no evidence to support that it was "foolish," Mr. Royster, because if they [559] never asked for that permission how could they assume? We are not going to be bound by their assumptions and state of mind.

Mr. Royster: That is your opinion, Mr. Hecht. Now, these men were escorted from the plant. It might well be that they decided that it was foolish to try to get permission.

Mr. Hecht: I think the charge speaks for itself, Mr. Examiner, and should be dismissed at this point.

Mr. Royster: I oppose that motion.

Trial Examiner Puckel: Motion denied at this time.

Mr. Hecht: Calling your attention, Mr. Examiner, to Subdivision 5 of Paragraph V, "Keeping Union meetings under surveillance."

I submit there is absolutely no evidence of such surveilkance.

Mr. Royster: Well, of course, there is evidence.

Trial Examiner Ruckel: What is the evidence?

Mr. Royster: That Charles Grube kept the meetings under surveillance.

Mr. Hecht: Charles Grube, may it please the Examiner, was a member of the ILWU.

Mr. Royster: There is no such evidence at all. There is evidence that he sat outside in a car and kept the AF of L meeting under surveillance. [560]

Mr. Edises: If he could have been inside it certainly does not establish that he had no right to stay outside. He was eligible, presumably, to membership in the AF of L.

Mr. Royster: That is your presumption, Mr. Edises. It is not mine.

Mr. Hecht: It is not even a presumption.

Mr. Royster: Now, just a minute. Let me finish my statement.

There is no evidence he was eligible to membership in the AF of L.

Mr. Hecht: May it please the Examiner, the evidence of the first witness put on the stand by Mr. Royster was that Mr. Chuck Grube was personally invited, that all employees were invited to go to the first meeting of the AF of L. Certainly, if he was eligible to attend the first meeting he was eligible to attend any and all meetings.

Mr. Royster: Do you contend that Mr. Railey was eligible to attend all meetings?

Mr. Hecht: I am not contending, I am just repeating what your witnesses themselves said.

Mr. Royster: Well, the fact is that the testi-

mony was to this effect: that the meeting of July 30 was an open meeting, it was an organizational meeting. As a matter of fact, it was not an AF of L meeting, and that all employees were invited to attend, but there is certainly no evidence [561] that the meetings after that were open meetings.

Trial Examiner Ruckel: I don't think there is any evidence of surveillance. Motion allowed to dismiss.

Mr. Hecht: Now, going back to Subdivision 1 of Paragraph V, may it please the Examiner, with reference to the first nine men removed from their employment, there is no evidence whatsoever that on July 30 and 31 the company had any knowledge of the reasons behind the removal from good standing of these men. Whatever may be said as to the company's refusal to reemploy them is, perhaps, still subject to argument, but I think there is no argument whatever on the question that the company did not discharge or threaten to discharge these men, that is, the first nine, because of any activity on behalf of the AF of L.

I think the record is clear as it can possibly be, it is proved beyond a demonstration by the very witnesses put on the stand by Mr. Royster.

Mr. Royster: Well, assuming that what Mr. Hecht says is true, I don't see that that is any grounds for requesting the dismissal of Paragraph 1 of Paragraph V.

Mr. Rowell: Furthermore, the case isn't closed yet. It would be quite inappropriate to grant such

a motion. In the first place, there is no evidence tending to indicate the company had knowledge——

Trial Examiner Ruckel: The case is closed as far as [562] the Board is concerned.

Mr. Rowell: I know, but if the evidence comes in as a result of the company's case, it is possible they might prove our case. Furthermore,——

Trial Examiner Ruckel: You can't depend on any such technique as that unless you get some evidence of your own case in.

Mr. Rowell: I never heard of such a motion being granted at this time when the case is not completed.

Trial Examiner Ruckel: Well, I certainly would grant the motion if I were of the opinion there was no evidence whatsoever, just in the hope that maybe some evidence might crop up during the respondent's case. I do, however, think that there is some evidence and I am going to deny the motion.

Mr. Hecht: 2 and 5 are granted then, Mr. Examiner?

Trial Examiner Ruckel: Sir?

Mr. Hecht: Subdivisions 2 and 5, the motions with respect to Subdivisions 2 and 5 are granted?

Trial Examiner Ruckel: That is right, 2 and 5.

Mr. Hecht: I will reserve further motions until the close of our case, Mr. Examiner.

Trial Examiner Ruckel: All right, sir.

Mr. Edises: Mr. Examiner, on behalf of the Intervener, I wish to move the dismissal of the complaint in so far as it charges the discriminatory discharge of the individual [563] complainants on the

ground that the evidence shows that there was at the time these alleged discharges took place a valid closed shop agreement with the ILWU.

Trial Examiner Ruckel: This isn't going to be extended, is it?

Mr. Edises: Oh, no. It will be very short.

The validity of the contract is not questioned, and I merely want to call to the attention of the Trial Examiner the fact that although the Board has indicated a disposition to protect employees from discharge under closed shop agreements at a time when a question of representation is open, it has never gone so far as to hold the employees who by their own action have withdrawn from the contracting union and thereby put themselves completely beyond the scope of the contract are entitled to such protection. The only cases which the Board has so far dealt with this question are ones in which the employees have remained in the contracting organization at the same time that they organized and became members of the rival labor organization.

Trial Examiner Ruckel: Does that complete the motion?

Mr. Edises: That part of it.

Trial Examiner: You are asking that the complaint be dismissed?

Mr. Edises: I have an additional motion. [564]

Trial Examiner Ruckel: Go ahead.

Mr. Edises: Do you wish me to proceed with that?

Trial Examiner Ruckel: Go ahead.

Mr. Edises: My second motion is that the com-

plaint be dismissed, and in the alternative that the Trial Examiner rule that these employees have placed themselves outside the scope of the Board's remedial action by reason of the fact that they participated against the will of the union to which they belonged in an unauthorized strike during wartime, thereby not only dishonoring the pledge that their labor organization and the labor movement generally had made against wartime strikes, but at the same time—well, I will withdraw that second ground—that it was in violation of the wartime no-strike pledge, that it was conduct of a kind which brings itself within the scope of appropriate discretionary action by the Trial Examiner, even if it were assumed that a case of violation of Section 8(3) of the Act had been established.

Trial Examiner Ruckel: Motion to dismiss on the grounds stated denied.

Any further motions? (No response.)

Call the first witness for the Respondent.

Mr. Hecht: Mr. Clifford A. Altman.

CLIFFORD A. ALTMAN

called as a witness on behalf of Colgate-Palmolive-Peet [565] Company, being first duly sworn, was examined and testified as follows:

(Testimony of Clifford A. Altman.)

Direct Examination

By Mr. Hecht:

Q. Will you state your name for the record, Mr. Altman? A. Clifford A. Altman.

Q. What is your business or occupation?

A. I am the Superintendent of the Colgate-Palmolive-Peet Plant in Berkeley.

Q. Will you keep your voice up, Mr. Altman?

A. Yes, sir.

Q. How long have you been employed by the Respondent? A. I am in the 30th year.

Q. And what is your present position?

A. My present position?

Q. Yes. A. Superintendent.

Q. Yes. And were you the Superintendent on July 26, 1945? A. Yes, sir.

Q. That day was a Saturday, was it not, July 26? Do you recall?

Mr. Royster: It was a Thursday. I will help you out a little bit.

Mr. Hecht: O, pardon me.

Let me lead the witness to save a little time, Mr. [566] Royster.

Mr. Royster: To a certain extent.

Q. (By Mr. Hecht): Were you aware of a supper meeting that certain employees of the Respondant held on July 26, 1945? A. No, sir.

Q. When, if ever, did you hear of that meeting?

A. I never heard of it until somebody mentioned it a few days ago.

Supreme Court of the United States

OCTOBER TERM, 1945

No. 47

Office - Supreme Court, U. S.
FILED
APR 4 1949
CHARLES ELMORE CROPLEY
CLERK

TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 694

695

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

In Four Volumes

VOLUME III

(Pages 667 to 987, inclusive)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

Transcript of Record
In Three Volumes
Volume III
Pages 667 to 987

Upon Petition for Review, and Petition to Enforce, Order of the National Labor Relations Board.

Rotary Colorprint, 870 Brannan Street, San Francisco 5-22-47—50

(Testimony of Clifford A. Altman.)

Q. Would it have been in my office last Thursday? A. That was the place.

Q. All right, sir. At what time do you usually arrive at work, Mr. Altman?

A. Around seven-fifteen in the morning.

Q. On July 30 did you arrive at your office about that time? A. Yes, sir.

Q. Did anything unusual occur during the course of the day?

A. In the afternoon something unusual occurred, yes, sir.

Q. Could you place the time?

A. Around 1:45.

Q. Will you relate this unusual incident?

A. Four gentlemen from the union came into my office and handed me a letter stating that the men noted in that letter were not in good standing with the union, and that, therefore, I must dismiss them.

Q. Before we go into that, let me date the events chronologically, Mr. Altman.

Were you at the plant on Saturday, July 28, 1945? A. Yes, sir.

Q. There has been some testimony here about a notice that was posted at the plant at that time. Do you have any recollection of such a notice?

A. Yes, sir.

Q. Can you state in substance what was stated in the notice? A. In that notice?

Q. Yes, please.

A. Well, the notice said that a meeting of the Welfare Association, of the Employees of the Col-

(Testimony of Clifford A. Altman.)

gate-Palmolive-Peet Company was going to be held. I have forgotten the time and place, but I guess that is a matter of record.

Q. Yes, that is sufficiently in the record. That is quite all right, Mr. Altman.

Did you do anything, were you caused to do anything by the reading of that notice?

A. No, sir.

Q. Did you inform any of your fellow executives?

A. I told Mr. Wood about it, yes, sir.

Q. How did you come to tell Mr. Wood about it? [568]

A. He called me on the phone and asked me if anything unusual had happened, and I related this incident.

Q. Did Mr. Wood have any commentary to make?

A. Nothing in particular that I remember.

Q. All right, sir. Let's go back then to July 30. And you were saying that four gentlemen came to your office, and what did they do?

A. They handed me the letter, the contents of which I have already stated.

Do you wish me to repeat it?

Q. Yes, if you will, please.

A. As I remember it, the letter stated that "The following men were no longer in good standing with the union," therefore we must dismiss them immediately from our employ.

Q. Who handed you the letter?

(Testimony of Clifford A. Altman.)

A. I believe it was Paul Heide.

Q. Is it your testimony that they are officers of the CIO union?

A. That was my understanding, yes, sir.

Q. Yes. What did you do when you were handed that notice? By the way, before we get into that, who were named in that notice?

A. Frank Marshall, Harry Smith, Dave Luchsinger, Sanford Moreau, and Clyde Haynes.

Q. I hand you Board's Exhibit 3 and ask you to look at it. [569] A. Ask what?

Q. Ask you to look at it. It purports to be a copy, I think, of the notice you received.

A. (Examining document.)

Trial Examiner Ruckel: That was the notice?

The Witness: The notice, yes, sir.

Q. (By Mr. Hecht): That is the copy of the notice you received? A. Yes, sir.

Q. What did you do after you had been handed that notice?

A. Well, of course, I was much upset by it, and I immediately went over to Mr. Railey's office to confer with him.

Q. And what was the outcome of your conference with Mr. Railey?

A. We came back to my office to communicate with these gentlemen.

Q. And what happened?

A. Well, as you understand, Mr. Railey was the spokesman, and he voiced our sentiment that we

(Testimony of Clifford A. Altman.)

had no reason, so far as we knew, for dismissing these men, and they immediately called attention to the fact that according to our contract if they were not in good standing they could not work there, and our reasoning with them was a protest that we had no reason to dismiss these men.

Q. And what happened after that? [570]

A. Well, the spokesman on the other side said, "Well, if you don't want to dismiss them bring them in here and we will dismiss them."

Q. And did you bring the men in?

A. I did, or I asked them to come in, and they came.

Q. And what else occurred?

A. I think it was Mr. Heide handed each one of them a typewritten piece of paper. These gentlemen read it over, and without comment they crumpled the papers in their hands, stuffed them in their pockets, and walked out.

Q. And did the union representatives remain in your office? A. For a little while, yes.

Q. Was there any further conversation with them?

A. Well, there was some further conversation, not at great lengths, but I do not remember the content of it now.

Q. Did you have an opportunity of seeing what was on the pieces of paper that were handed to the five men? A. No, I never saw them.

Q. Have you ever seen it? A. No, sir.

(Testimony of Clifford A. Altman.)

Q. Did the union officials make any further requests of you?

A. I do not remember of anything further right at that time. [571]

Q. That was the end of the matter, they walked out, and you went back to your duties?

A. That is right.

Q. Were you at the plant on July 31, 1945?

A. Yes, sir.

Q. Anything unusual occur on that date?

A. Yes, sir.

Q. Will you please relate to the Examiner what occurred?

A. Well, there were four men that called on me and——

Q. (Interposing): Before you go any further, will you name the persons, if you know their names?

A. Mr. Sherman, Mr. Lonnberg, Olsen and Thompson.

Q. Were they employees at the plant?

A. Yes, sir.

Q. All right. Will you relate what occurred between you and these gentlemen?

A. They asked me to allow the men who had been sent out of the plant the day before to return to work.

Q. And what did you do upon having that request made of you?

A. My reply was that these men could not be put to work by us until they had answered the

(Testimony of Clifford A. Altman.)

charges made by the union, and they had been restored to good standing.

Q. And was that the end of the matter?

A. They left my office at that time, yes. [572]

Q. Did you communicate this event to either Mr. Railey or Mr. Wood?

A. I can't remember the exact chronological order, but shortly thereafter these men went to Mr. Railey's office and talked to him, and in the meantime the officers of the union came into my office, and I believe it was at that time they handed me a letter saying that the men I have just mentioned were also no longer in good standing with the company and they must be dismissed.

Mr. Hecht: Pardon, Mr. Royster. Did that go into evidence?

Mr. Royster: I am not sure that it did.

(Mr. Royster handed Mr. Hecht a document.)

Q. (By Mr. Hecht): I hand you a photostatic copy of a letter written on the stationery of the Warehousemen's Union dated July 31, 1945, and addressed to the Colgate-Palmolive-Peet Company, attention of Mr. C. A. Altman, signed by Paul Heide, Vice President.

Will you look at it?

A. That is the document.

Q. That is a true copy of the document that was handed you?

A. As I remember it, yes, sir.

(Testimony of Clifford A. Altman.)

Mr. Hecht: Yes. May it be marked as Respondent's next exhibit in order? [573]

(Thereupon the document above referred to was marked Respondent's Exhibit No. 16 for identification.)

Mr. Edises: May I see it?

Mr. Hecht: Yes (handing document).

Mr. Rowell: Let me see it.

(The document was handed to Mr. Rowell.)

Trial Examiner Ruckel: Are you offering it?

Mr. Hecht: We offer it in evidence, Mr. Examiner.

Trial Examiner Ruckel: Any objection to it?

Mr. Royster: No objection.

Trial Examiner Ruckel: It will be received.

(The document heretofore marked Respondent's Exhibit No. 16 for identification was received in evidence.)

Q. (By Mr. Hecht): Mr. Altman, when the four men first walked into your office, and prior to the time that you were handed that letter from the ILWU, did Mr. Thompson or Mr. Sherman or Mr. Lonnberg or Mr. Olsen or someone speaking for them, tell you if they were going to back up their demand in some manner?

A. I don't recall just what they did say.

Q. You don't recall? A. No.

Q. I see.

A. Except I said that they requested us to put the other men back, didn't I, in my former statement? [574]

(Testimony of Clifford A. Altman.)

Q. Yes. A. Yes.

Q. Well, when the union then came in, what did you do? A. I sought help.

Q. And handed you that letter?

A. I sought help. I went to Mr. Railey.

Q. And did you get help?

A. Well, I went over to Mr. Railey's office and showed him the communication, and when I got to Mr. Railey's office the four men mentioned in the message were there.

Q. You mean Messrs. Thompson, Sherman, Lonnberg and Olsen? A. That is right.

Q. Yes. And what happened?

A. Well, while we were conversing there one of the gentlemen from my office called on the phone and said they wanted action immediately on this request.

Q. Who wanted action immediately on what request, Mr. Altman? Will you elaborate?

A. The officers of the union who had handed me this request to dismiss these gentlemen, Sherman, Lonnberg, Olsen and Thompson, and they did not wait for a reply. They came right over and we invited them into the office.

Q. Whose office?

A. Mr. Railey's office, where the other men were.

Q. Yes. What followed after their entry into that office? [575]

A. Well, I don't recall the exact way that they all got together, but in a few minutes the five men

(Testimony of Clifford A. Altman.)

who had gone out the day before— do you want their names?

Q. Yes, will you name them?

A. Marshall, Smith, Luchsinger, Moreau, and Haynes, and the four——

Q. (Interposing): Will you now name the union officers who arrived at the second demand for dismissal? A. Mr. Lynden, Mr. Duarte——

Mr. Edises (Interposing): Lynden?

The Witness: Lynden, that is right. Mr. Gonick, and I believe Mr. Gleichman was there, and Mr. Lynch.

Q. (By Mr. Hecht): And did any conversation ensue between the persons assembled there?

A. Yes, sir, there was some conversation there. The spokesman for the union said that the men——

Q. (Interposing): Who was he, if you remember?

A. Mr. Lynden. Lynden said these men cited would have to stand trial, and if they were cleared of the charges that had been made against them, why, they would be allowed to return to work, and also the union said they would pay them for the time they lost if they proved that they were innocent.

Q. Did you inquire as to the nature of the charges made against these men? [576]

A. Well, we did at various times ask what the charges were, and the reply was that they were not in good standing and they would have to stand trial.

(Testimony of Clifford A. Altman.)

Q. That is as much information as you got?

A. That is right.

Q. Did any further colloquy take place?

A. Well, the gist of the conference was that we would like to have the employees returned to work, and if they had their differences that they should work them out some other place than our place of business.

Q. Yes.

A. And the officers of the union cited above suggested that these men who had been designated as not being in good standing be requested to leave the plant.

Q. Were they so requested? Did you request them to leave the plant?

A. I do not recall that I requested them in so many words. The upshot was that they went out in the plant——

Trial Examiner Ruckel (Interposing): Who is "they"?

The Witness: These nine men from the working side of the union.

Q. (By Mr. Hecht): Perhaps it will aid you, Mr. Altman, and it might aid the Examiner, to call them the five Stewards and the five committeemen. I think that is a good description. [577]

A. Yes. They went out in the plant and remained around for a short time, and then the five Stewards and the four committeemen, as I recall it, left, and also the Business Agents left.

Q. You mean the officers of the union?

(Testimony of Clifford A. Altman.)

A. The officers, yes.

Q. That ended that particular incident?

A. Yes, sir.

Q. Anything else occur during that day?

A. Well, there were rumors flying around, and the upshot of it was that when the employees went out of our plant at noon for the lunch period they did not return to work at 12:30, that is, the great majority. There were a few who remained on the job all day, but the great majority went out.

Q. When did this "great majority" return to work?

A. Well, the great majority returned to work on the morning of August 3.

Q. Did you plant operate during that period?

A. In a limping way, yes, sir.

Q. And at that time did you know that the ILWU had a pledge not to strike during wartime?

A. Yes, sir.

Mr. Rowell: That is immaterial, whether he knew it or not. [578]

Mr. Hecht: It is very material.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Hecht): Your answer was "Yes"?

A. Yes, sir.

Q. And there was a stoppage of approximately two or three days at your plant? A. Yes, sir.

Q. Did you at any time between July 30 and the 3rd of August learn from any source, or did you get any information from any source as to what

(Testimony of Clifford A. Altman.)

was alleged to be the reason for this controversy and this work stoppage?

A. Well, nothing definite, no official notice, if that is what you mean.

Q. Well, in the press or elsewhere?

A. Well, I read the articles in several of the daily press, yes.

Q. And what did you learn from the press?

A. Well, there was an accusation of racial discrimination seemed to be the main topic.

Q. Was there any mention in the press as to this IWLU strike pledge?

A. I don't recall that in connection with this article.

Q. Do you know against whom this accusation of discrimination was leveled in the papers?

Mr. Rowell: Well, now, that is going to be excepted to. [579]

Mr. Hecht: I am asking for the truth or falsity of the statement.

Trial Examiner Ruckel: I understand. He may answer.

A. Well, the statement was somewhat non-clear, I thought, as to who was the discriminating party.

Q. (By Mr. Hecht): But you knew that there were charges of that discrimination?

A. Yes, sir.

Q. Did you, during this period, following the period of August 3, did you get any communication of any type from either the committeemen or the discharged stewards?

A. Get any what?

(Testimony of Clifford A. Altman.)

Q. Any communication, were you called on the phone by anyone? A. Not that I recall.

Q. Didn't Mr. Sherman call you on the phone, making some inquiry about his coming to work?

A. That is right.

Q. Will you relate that?

A. Mr. Sherman called me one evening— I don't remember the date, but he asked me if I wanted him to return to work. And I called his attention to the fact that the union had said he was not in good standing, and until he cleared those charges, why, he was not eligible for employment.

Q. Yes. What did Mr. Sherman say to that?

A. He said, "O.K."

Q. That ended that conversation?

A. That ended it.

Q. Mr. Altman, it has been testified here that on August 25—is it August 25? No. Pardon me. I withdraw that question.

Did anything concerning the nine men, to-wit, the five Stewards and the four committeemen, occur on or about August 17?

A. I don't recall the date. It may be that is the date they came to the plant and presented themselves for work.

Is that the date?

Q. That is the incident to which I have reference.

Will you relate to the Examiner just what occurred in connection with that?

A. They came to our plant and presented them-

(Testimony of Clifford A. Altman.)

selves for work, and Mr. Wood, the man who has charge of our labor relations, talked to them.

Q. What was that conversation or that talk?

A. Well, the gist of it was that until they were cleared through the union, why, we couldn't put them to work.

Q. Did any one of the nine men or their spokesman state to Mr. Wood or to you the reason for their being in bad standing with the ILWU?

A. Did they state their reason? [581]

Q. Yes.

A. Or ask their reason?

Q. No. Did they state any reason for being in bad standing with the ILWU?

A. Not so far as I heard.

Q. I see. Did they deny that they were in bad standing with the ILWU?

Mr. Rowell: That is objected to. There is no testimony that they were accused of——

Trial Examiner Ruckel: He may answer.

A. Well, at that time I don't remember that they made any statement one way or the other about that.

Q. (By Mr. Hecht): They made no statement. Going forward to August 31, Mr. Altman, it has been related here that prior to seven o'clock A. M. of that day there was some sort of a glomeration of men, described variously as a picket line, in front of the plant.

Do you recall that incident?

A. Do you mean August or July?

(Testimony of Clifford A. Altman.)

Q. I think it is August, Mr. Altman.

A. Well, maybe if you refresh my memory— I was thinking of the July 31— the stopping of the men to check their books, I understood, although I was not——

Q. (Interposing): I think you are 30 days off on that, Mr. Altman. Maybe this will refresh your recollection. It, I [582] think, was one or two days prior to the removal from employment of about 17 or 18 of your employees.

A. Well, if that is the case, I remember of them stopping them at the gate, yes, and checking.

Q. Who was doing the stopping, if you know?

A. The officers of the union.

Q. Can you name some of those officers?

A. Well, I believe Mr. Gleichman was there, I believe Mr. Gonick was there.

Q. This stopping, as you deseribe it, for the purpose of checking books, where did it occur? Inside or outside your plant?

A. At first it was just outside the gate.

Q. I mean, did this thing— was this thing finally brought into your gate?

A. Some of it, yes, sir.

Q. How did that come to pass?

A. Well, I believe there was a protest by the Police Department that they were blocking the street, so then they came inside.

Q. Yes. Let me ask you this: Has it been the usual custom at the Respondent's plant to permit

(Testimony of Clifford A. Altman.)

representatives of the ILWU to come in to check such things as dues books, etc?. A. Yes, sir.

Q. That is a custom of many years standing?

A. Yes, sir.

Trial Examiner Ruckel: And to collect dues?

The Witness: Yes, sir.

Q. (By Mr. Hecht): Do you know a young lady by the name of Ophelia Reyes, Miss Ophelia Reyes? A. Well, I know the name.

Q. You know the name? A. Yes, sir.

Q. Do you recall someone by that name being employed at the plant? A. Yes, sir.

Q. On the day in question of this picket line, or whatever you want to call it, did you have occasion to walk outside the plant, the fence surrounding the plant, and walk down the block?

A. I believe I did walk down a short way there, yes, sir.

Q. Do you recall approaching a group in which Miss Reyes, it has been testified, was in, and being asked why they were not permitted to come into the plant?

A. I do not remember that incident.

Q. Do you recall at this moment some officer of the union, Business Agent (maybe Mr. Gleichman) stated in your presence that they were not permitted to enter because they were AF of L adherents or participants?

A. I never heard any such statement at all. [584]

Q. Did you stop to talk to anybody in the course of your walk outside the plant?

(Testimony of Clifford A. Altman.)

A. I do not remember of conversing with anybody there.

Mr. Rowell: I move to strike the answer that he didn't make any such statement, Mr. Examiner.

Trial Examiner Ruckel: I beg your pardon?

Mr. Rowell: His memory is apparently a blank on that occasion. I move to strike the answer that he never heard any such statement. He can't even remember the occasion.

Trial Examiner Ruckel: He gave two answers, and in one he said he recalled making such statement.

Is there some inconsistency, you mean?

Mr. Rowell: No. He says he did not hear a statement made by Mr. Gleichman that these men were not being allowed in because they were A F of L. He remembers that definitely because——

The Witness: I did not hear it. I did not say it was not made.

Trial Examiner Ruckel: What is your point?

Mr. Rowell: He has testified he has no memory as to the occasion. All he can testify is that he doesn't recall whether a statement was made or not.

Mr. Edises: Mr. Examiner, I submit the record speaks for itself.

Trial Examiner Ruckel: I don't follow that. [585]

Mr. Edises: I beg your pardon. The record speaks for itself.

Trial Examiner Ruckel: Go ahead.

Q. (By Mr. Hecht): You didn't hear any such statement, is that your testimony, Mr. Altman?

(Testimony of Clifford A. Altman.)

A. That is my testimony, yes, sir.

Q. Moving forward to August, or rather, September 1, 1945, Mr. Altman, did anything extraordinary occur at the plant on that day?

A. What date?

Q. September 1, 1945.

What is the date of that, when all those 18——

Mr. Royster (Interposing): That was the first, September 1.

Q. (By Mr. Hecht): September 1, yes?

A. Yes, sir, we received another communication.

Q. From the union? A. Yes.

Q. Did you receive it? A. Well, I saw it.

Q. I will show you Board's Exhibit No. 10, the photostatic copy of a letter on ILWU stationery, and ask you to look at it.

A. (Examining document): I saw it, yes, sir.

Q. Will you testify as to whether that is a true copy of [586] the letter received by you?

A. It is.

Q. It is directed to your attention, is it not?

A. Yes, sir.

Q. What did you do with that letter? Did you refer it to Mr. Wood?

A. Well, Mr. Wood and Mr. Railey.

Q. And what happened?

A. Well, later on in the day—as I recall it, this came in in the morning. Later on in the day we called these men cited in the letter into Mr. Riley's office and had some conversation with them.

Q. Did you speak? A. No, sir.

(Testimony of Clifford A. Altman.)

Q. Did Mr. Wood speak?

A. Oh, maybe an occasional word or so, but the main spokesman was Mr. Railey.

Q. And what did Mr. Railey say?

A. Well, his statement was in the form of expressing his—I can't find the word—regret at having to comply with this request. It was not only affecting the people cited in the missive, but it was affecting the company. And, as I recall it, his remarks were in the form of commiserations in connection with the situation.

Q. What other company representatives were present at that [587] time?

A. From the management end?

Q. Yes, sir.

A. Mr. Wood, Mr. Railey, Mr. Stanberry, Mr. Carter, and myself.

Q. Did Mr. Carter or Mr. Stanberry say anything? A. I do not recall that they did.

Q. I will ask you the specific question, whether you heard Mr. Railey at that time and place say "We didn't want you in the first place to join a union, and we fought you. Now you must take the consequences"?

A. I did not hear him make that statement, and it is very unlike the gentleman.

Mr. Rowell: I ask the last part of the answer be stricken.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Hecht): Did you hear any state-

(Testimony of Clifford A. Altman.)

ment that might be in substance similar to that made by Mr. Railey? A. No, sir.

Q. Did you hear either Mr. Wood or Mr. Railey say to anyone present at the time, "If you had not worn the A F of L buttons you wouldn't be in the mess you are in"? A. No, sir.

Q. You are positive of that?

A. Yes, sir. [588]

Mr. Hecht: I guess that is all.

Q. (By Mr. Edises): Mr. Altman, during the entire period of the war, with the exception of this work stoppage of July 31 to August 3, was there any strike or other interruption of production at your plant by the ILWU, or members of the ILWU? A. No, sir.

Mr. Edises: That is all.

Cross Examination

By Mr. Royster:

Q. How long have you been at the Berkeley plant, Mr. Altman?

A. At the Berkeley plant?

Q. Yes, sir.

A. Since September 9, 1920.

Q. Now, you testified that on Saturday, July 28, you saw a notice on the bulletin board which said something about a meeting of Employees Welfare Association? A. I did.

Q. What bulletin board did you see that on?

A. On the bulletin board in "A" Building.

Q. And is that near your office?

(Testimony of Clifford A. Altman.)

A. About 90 feet from my office.

Q. Near a time clock, I believe?

A. Yes, sir.

Q. Did you ever see any other bulletins on that board? [589] A. Have I?

Q. Yes. A. Yes, sir.

Q. You pass by the board frequently?

A. Yes, sir.

Q. Several times a day? A. Yes, sir.

Q. You generally stop to see if there is anything new on the board?

A. If I see anything new I generally read it, yes.

Q. Does the company put up bulletins on that board? A. Yes, sir.

Q. Advices to employees, announcements, that sort of thing? A. Yes, sir.

Q. What limitation is there on the use of that bulletin board, if any? Can anyone come in there and post what they like on it?

A. As far as the company is concerned, yes, sir. Well, maybe I should qualify that. Any employee can put anything up there.

Did you mean that people could come in from the outside and put it up?

Q. Well, that was the way my question was framed. Any employee, you say? [590]

A. Yes, sir.

Q. Do you possess any kind of control over what material goes on that board? A. No, sir.

Q. If an employee wanted to put up an ad there

(Testimony of Clifford A. Altman.)

for Ivory soap, would you think that was all right?

Trial Examiner Ruckel: After all, that is going pretty far.

Mr. Royster: Well, I want it to go pretty far.

A. Well, I don't know. I have never seen anything like that happen, so I can't tell you.

Q. (By Mr. Royster): Well, isn't it true, Mr. Altman, that you expect employees or anyone else who puts up a notice there to put up a notice that is not offensive? If you saw a notice that you thought would be offensive to your employees, wouldn't you tear it down?

Mr. Hecht: I am going to object to the form of the question.

Trial Examiner Ruckel: Well, if he saw a notice that was offensive, you say?

Mr. Royster: Yes.

Trial Examiner Ruckel: Would he tear it down?

Mr. Royster: Yes.

Mr. Hecht: I don't know what relevancy this has.

Mr. Royster: It is just relevant to this extent: I am [591] trying to discover whether or not the company maintained any kind of control over the notices that were posted on the board.

Trial Examiner Ruckel: Objection sustained. Find out if the company ever did tear anything down.

Q. (By Mr. Royster): Have you ever removed any notice from that bulletin board?

(Testimony of Clifford A. Altman.)

A. We have removed our own notices after they were past due.

Q. Have you removed any notices because you thought they should not be on that board?

A. No, sir.

Q. Have you knowledge that any notices have been removed for that reason?

A. No direct knowledge, no, sir.

Q. What indirect knowledge have you?

Mr. Edises: Well, now, I will object to that as obviously calling for matters not within his own knowledge; hearsay.

Mr. Royster: Well, not necessarily.

A. I never saw anybody remove a notice from the bulletin board.

Q. (By Mr. Royster): Well, now, did anybody ever tell you that he had removed a notice from the bulletin board? A. No, sir. [592]

Mr. Hecht: Now, Mr. Examiner——

Mr. Edises (Interposing): He answered "No, sir."

Trial Examiner Ruckel: If there is an objection, objection overruled.

You may answer.

Mr. Royster: I understand he did answer.

Q. (By Mr. Royster): You have answered, Mr. Altman? A. Yes, sir.

Q. Your answer was "No, sir."

A. My answer was "No, sir."

Q. Now, you testified also, Mr. Altman, that on

(Testimony of Clifford A. Altman.)

July 30 the stewards were called to your office and there was a conversation, or at least you were——

A. (Interposing): Not my office.

Q. Mr. Railey's office, was it?

A. That is right.

Q. That there was a conversation then with the ILWU representatives? After the Stewards had been given their letter, they took their letters, as you said, I believe, ——

A. (Interposing): Well, that happened the day before.

Q. July 30?

A. Oh, I thought you said 31st.

Q. I didn't intend to. I meanf July 30.

A. Well, I may be mistaken. On the 30th, you are right.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.) [593]

Trial Examiner Ruckel: On the record. We will recess until 1:30.

(Whereupon, at 12:00 M. a recess was taken until 1:30 P.M. of the same day.) [594]

(After recess:)

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 P.M.)

Trial Examiner Ruckel: The hearing will resume, please.

Mr. Altman.

CLIFFORD A. ALTMAN

called as a witness by and on behalf of Respondent, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination
(Resumed)

Mr. Royster: Can you tell me at what point——

Mr. Hecht (Interposing): May I just enter an objection at this point, Mr. Examiner? If I recall the testimony correctly, Mr. Royster was examining Mr. Altman on the use of the bulletin boards.

Trial Examiner Ruckel: Yes, sir.

Mr. Hecht: And, as I recall, my motion to dismiss the charge respecting the use of the bulletin boards was granted, there was no refusal of use of the bulletin boards, and I don't think that matter should be gone into on cross examination.

Trial Examiner Ruckel: I think the purpose of going into it was to see if he had notice of what this union scrap was about by reason of having seen——

Mr. Hecht: You mean as to the exhibits of the Board [595] that are in now?

Trial Examiner Ruckel: Yes.

Mr. Hecht: For that limited purpose, that is all right.

Trial Examiner Ruckel: Is that the purpose?

Mr. Royster; Just generally to show he was aware of what appeared on the bulletin board, and that the bulletin board was the company's bulletin board.

(Testimony of Clifford A. Altman.)

Q. (By Mr. Royster): Now, on July 30, Mr. Altman, the company was requested to discharge the five Stewards, or to suspend them from employment. After that had been done you testified that you had further conversations with the ILWU representatives.

Now, may I have the exhibit file?

(The exhibit file was handed to Mr. Royster.)

Q. (By Mr. Royster): Were you aware at that time, during the time that you were conversing with the ILWU representatives, and after the Stewards had been notified of their suspension, that Harry Smith, for example, had then been employed by your company for nearly 15 years?

Mr. Edises: Objected to, incompetent, irrelevant, and immaterial.

Mr. Hecht: I object to that.

Trial Examiner Ruckel: What is the relevancy?

Mr. Royster: I propose to show by this line of questioning [596] that every one of these Stewards was a man who had been in the employ of the company for a great length of time, and suggest to this witness the reasonableness of my conclusion that he explored rather extensively with the ILWU representatives the reasons underlying the requests for suspension.

Mr. Edises: Well, Mr. Examiner, I point out that their length of service with the company is not disputed, it is in the record, and the knowledge of that fact in the mind of this witness is of no ma-

(Testimony of Clifford A. Altman.)

teriality to that issue. He is certainly entitled to ask the direct question as to what was said, but what this witness may have had lurking in the back of his mind has no direct bearing on the issue.

Mr. Royster: This is cross examination, Mr. Edises. And may I inquire: Did you say that the length of time these individuals had been employed was in the record?

Mr. Edises: Isn't it?

Mr. Royster: Oh, yes, it is.

Mr. Hecht: Yes, he put an exhibit in.

Mr. Royster: My impression was you said it was not in the record.

Mr. Edises: No, I say it is in the record.

Trial Eaxminer Ruckel: Objection sustained.

Q. (By Mr. Royster): Well, what inquiry, if any, did you make then of the ILWU representatives as to the reasons for [597] the requested suspensions?

A. I was not the spokesman.

Q. No. I am asking you what you did, though, Mr. Altman? A. What I did?

Q. Yes. What you asked——

Trial Examiner Ruckel (Interposing): If anything.

The Witness: I beg your pardon?

Trial Examiner Ruckel: If anything. Do you understand the question, Mr. Altman?

The Witness: Why, I am trying to think what I can remember, what was said further than what has been stated.

(Testimony of Clifford A. Altman.)

Mr. Hecht: Well, repeat what you said.

The Witness: I don't know that I can elaborate any more on it.

Q. (By Mr. Royster): Well, did you make any inquiry (you, yourself, now) of any of these ILWU representatives as to the reason for suspending these five stewards?

A. Not that I remember.

Q. Did Mr. Railey make any inquiry in your hearing?

A. We made the statement that we——

Q. (Interposing): Now, just a moment, Mr. Altman.

Mr. Hecht: Let him finish his answer, please.

Mr. Royster: It starts out not being answered. He said, "We made the statement."

The Witness: Speaking for the company. [598]

Q. (By Mr. Royster): I asked him what Mr. Railey asked in his presence of the ILWU representatives concerning the reasons underlying the requested suspensions?

A. I do not recall.

Q. Do you recall if Mr. Railey made any inquiry? A. Well, we——

Q. (Interposing): Just a minute now!

Mr. Hecht: Let him answer.

Mr. Royster: I submit that he is not answering. He is saying "We." I am asking——

Mr. Hecht (Interposing): Well, I move to strike everything——

(Testimony of Clifford A. Altman.)

Trial Examiner Ruckel: He may answer.

Continue with your answer. Did Mr. Railey make any inquiry in your presence as to why the suspension of these men was requested?

The Witness: Well, he certainly made the statement that as far as we knew there was no reason for their being suspended.

Trial Examiner Ruckel: Well, that is a statement. Now, did he make any inquiry as to why they were being requested to be suspended?

The Witness: Well, the statement—or the question was asked, and they replied that they were not in good standing with the union. [599]

Trial Examiner Ruckel: Mr. Railey asked that?

The Witness: Yes.

Trial Examiner Ruckel: You have already testified to that. Did he make any further inquiry?

The Witness: Well, what further inquiry could he make?

Trial Examiner Ruckel: Well, if he didn't make any, just say that he didn't. Maybe he couldn't. We want to know if he did.

The Witness: That is as far as we know.

Q. (By Mr. Royster): In other words, Mr. Railey made no inquiry——

Trial Examiner Ruckel: Aside from——

Mr. Royster (Interposing): He has not testified he made an inquiry.

Mr. Hecht: He has indeed. He said Mr. Railey asked, and the union men said they were in bad standing.

(Testimony of Clifford A. Altman.)

Mr. Royster: I will submit to what the record shows.

Mr. Hecht: The record shows that this witness said——

Mr. Royster (Interposing): Will you read back the record, Miss Reporter, please?

Trial Examiner Ruckel: Read back the record.

(The testimony and statements referred to were read by the reporter.)

Mr. Royster: I will let it drop at that point.

Q. (By Mr. Royster): Now, Mr. Altman, do your duties require [600] that you go out in the operating departments of the plant frequently?

A. I make it my duty to do so, yes, sir.

Q. That is a daily occurrence, is it?

A. Yes, sir.

A. And during the period from about July 21 to July 30, 1945, was it your practice to go out through the plant? A. Yes, sir.

Q. Daily? A. Yes, sir.

Q. During these daily tours of the plant did you become aware that there was, well, a certain amount of unrest among your employees?

A. I did not.

Q. Now, on July 28 you saw on the bulletin board a notice of a meeting to be held by the Employees Welfare Association. What did that mean to you? A. Not a thing!

Q. Nonetheless you saw fit to call it to the attention of Mr. Wood, did you not?

(Testimony of Clifford A. Altman.)

A. Why, I told him about it, yes.

Q. Yes. It was a matter worthy of comment, wasn't it? A. Possibly.

Q. Did you, when you were requested—and when I say "You" at this time I am thinking of the company—when [601] the company was requested to discharge or suspend the five Stewards did you associate that request in any respect with the notice that you saw on the bulletin board July 28?

A. I don't think I did.

Q. Did you know that a meeting of your employees was held at the Finnish Hall on the afternoon of July 30, 1945?

A. Only by hearsay. I didn't attend it.

Q. You learned of it, you knew of it, did you not? A. Yes, sir.

Q. It was a matter generally known throughout the plant, was it not? A. Yes, sir.

Q. And you knew, did you not, that this meeting concerned the union affiliation of your employees?

A. I don't know how I would know that.

Q. Well, I am asking you if you did know it?

A. I did not.

Q. Did you have any opinion as to the purpose of this meeting?

A. There were lots of stories going around, but I had no direct evidence.

Q. Well, did you have any opinion about it?

Mr. Hecht: I think his opinion is not material, Mr. Examiner.

Mr. Royster: The state of this man's mind on

(Testimony of Clifford A. Altman.)

the dates [602] in which we are interested is just as much a matter of fact as the state of his stomach and is just as susceptible of proof.

Mr. Hecht: If you will be consistent with that statement when I examine the other witnesses I will accept it.

Trial Examiner Ruckel: I think it is relevant. You may answer as to what your opinion was.

A. Well, I couldn't help but hear stories, but I had no direct evidence because I was not invited to the meeting, and I did not attend.

Q. (By Mr. Royster): I understand that. Now, I ask you again: what was your opinion, if you had one, with respect to the purpose of this meeting?

Mr. Hecht: When? Before or after the meeting, Mr. Royster?

Mr. Royster: He can tell me when he formed the opinion.

A. That is a pretty hard question to answer, just when I formed an opinion. The events and the news and the gossip and all gathered and accumulated until we finally found out some things, but just when it occurred I couldn't tell you.

Q. (By Mr. Royster): Well, I suppose then, Mr. Altman, you will agree that eventually you discovered that the purpose of this meeting was to disassociate from the ILWU and to choose another bargaining representative?

A. That eventually came out, yes. [603]

(Testimony of Clifford A. Altman.)

Q. Now, will you tell me as best you can when you first learned that?

A. It would have to be a guess. I can't say.

Q. All right. Let's have your best guess.

Mr. Edises: Well, Mr. Examiner, I submit that by the witness' own testimony it is clear that a guess would be utterly valueless for the purposes of the proof. I object to the question on that ground.

Mr. Royster: All right. I will try to put it a little more closely.

Q. (By Mr. Royster): Did you know of the purpose of this meeting on the day following its holding, on July 31?

A. Only by hearsay. The employees did not ask me——

Q. (Interposing): All right. Very well. You have answered.

I am not sure that I correctly recall your testimony on this point, and if I am wrong, you may, of course, correct me.

On August 17, 1945, the testimony is, and I believe you agreed, that the five stewards and the four committeemen applied for reinstatement to their positions.

Was it to you that they applied for reinstatement?

A. Well, Mr. Wood and I together were in the office, in my office, and they came in there, and Mr. Wood was the spokesman.

Q. Now, when they applied to you for reinstatement did you know on that date, August 17, 1945,

(Testimony of Clifford A. Altman.)

that the meeting of July 30 [604] had been held for the purpose of severance from the ILWU and forming another labor organization?

A. I presume it was fairly definitely stated by that time.

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any questions by the A F of L?

Mr. Rowell: Just one moment, please. I don't believe I have any questions.

Trial Examiner Ruckel: Any further questions by the Respondent?

Mr. Hecht: Mr. Edises, have you any examination?

Mr. Edises: Just one moment.

Redirect Examination.

By Mr. Edises:

Q. Mr. Altman, did you ever arrive at a fixed and definite belief as to what the motive of the ILWU was in requesting these discharges?

A. You mean why they wrote those letters?

Q. That is right. Now, I would like to make my question perfectly clear. I am not asking you as to what may have occurred to you speculatively as possible reasons. The question is whether you ever arrived at any fixed and definite belief as to what the motive of the ILWU was in requesting these discharges?

A. Well, I had never followed it through on that score.

(Testimony of Clifford A. Altman.)

Trial Examiner Ruckel: What is your answer, though?

Mr. Hecht: Will you read the answer, Miss Reporter? [605]

(The answer referred to was read by the reporter.)

Trial Examiner Ruckel: Well, it seems to avoid an answer rather than being an answer.

The question is: Did you ever arrive at a fixed opinion as to what the motive was?

The Witness: Well, if the HLWU did not tell us the reason, anything that I could state would simply be an assumption.

Trial Examiner Ruckel: Well, then, your answer is it did not?

The Witness: That is right.

Mr. Edises: That is all.

Mr. Hecht: May I ask some questions, Mr. Examiner?

Trial Examiner Ruckel: Yes, sir.

Q. (By Mr. Hecht): Mr. Altman, you were asked whether on *October* 17 you already knew about the A F of L movement in the plant, or words to that effect? That is correct, isn't it?

A. Yes.

Q. What else did you know about on August 17 besides this A F of L movement?

A. What else did I know about?

Q. What else did you know besides this A F of L movement?

(Testimony of Clifford A. Altman.)

Mr. Rowell: That calls for an encyclopedic answer, Mr. Examiner. [606]

Q. (By Mr. Hecht): In connection with this matter you know that there had been a work stoppage? A. Yes, sir.

Q. You knew there had been some talk in the paper about racial discrimination?

A. Yes, sir.

Mr. Royster: This is a rehashing of cross examination.

Mr. Hecht: No, it is in response to your questioning.

The Witness: I knew those things. Those were public utterances.

Q. (By Mr. Hecht): As public as the A F of L movement in the plant?

A. Well, the A F of L, as far as I know, never sent me a notice that they were trying to organize our employees.

Does that answer the question?

Q. Yes.

A. It was never put down in writing.

Q. To you personally, that is?

A. To me personally.

Mr. Hecht: I have no further questions.

Mr. Royster: Nothing further for the Board.

Mr. Rowell: May I ask a question?

Trial Examiner Ruckel: Yes.

(Testimony of Clifford A. Altman.)

Recross Examination

By Mr. Rowell:

Q. In regard to the question concerning the motive of the ILWU in requesting the discharges, did you [607] ever form an opinion, although it might not have been as strong as Mr. Edises requested, did you ever form an opinion as to their motive in requesting the discharges?

A. I couldn't form that opinion.

Q. My question is, did you or did you not?

A. I did not.

Q. Did you have some information as to that motive, whether by hearsay or otherwise?

A. Well, there were numerous things that you might have—if you wanted to carry through and say that they were the things that caused it, but I had no evidence as to what that—what lay behind these orders.

Mr. Rowell: I have no further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Hecht: Call Mr. Carter.

CECIL R. CARTER

called as a witness by and one behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Testimony of Cecil R. Carter.)

Direct Examination

By Mr. Hecht:

Q. Will you state your name for the record, Mr. Carter? A. Cecil R. Carter.

Q. What is your business or occupation?

A. Process Supervisor, Colgate-Palmolive-Peet Company, Berkeley.

Q. And were you employed by the—let me put it another way.

How long have you been employed by the Respondent?

A. Since September 1924.

Q. Were you at the plant on or about August—when was that visit of Mr. Howard's?

Mr. Royster: August 25.

Q. (By Mr. Hecht): August 25, 1945, at the plant? A. I was.

Q. What day of the week was that?

A. Saturday.

Q. Where in the plant were you at the time? Oh, yes, I imagine you were all over the plant?

A. All over the plant.

Q. Calling your attention to about 1 or 1:30 in the afternoon, being in "A" Building, can you tell me of anything unusual that occurred at that time?

A. Yes. I was informed by Miss Kaiser, our Plant Nurse, that some of the employees who had been dismissed from the company were in the plant electioneering for the A F of L.

Q. Did you do anything pursuant to that information?

(Testimony of Cecil R. Carter.)

A. I immediately went through the plant to find them. I went through the northern side of the plant first, came [609] back through the middle building, and then went to the "TA" Warehouse where I found them.

Q. What occurred?

A. Well, there was about 20 or 25 employees grouped around Mr. Harvey Howard, Mr. Dave Luchsinger and Mr. Lonnberg.

Q. Were those employees supposed to be at work at that time?

A. They were supposed to be working at that time.

Q. What, if anything, did you do?

A. I motioned to Mr. Luchsinger, and he came over, and I asked him if he had permission to come in the plant. He said, 'No," and I reprimanded him and told him that he had worked there long enough, than he knew better than to come into the plant and bring other people in the plant without getting permission. I told him that I would have to escort him to the gate, they would have to leave until such time as they got permission to come in.

Q. You say you escorted them to the gate. Did anything occur at the gate?

A. Going over to the gate either Mr. Luchsinger or Mr. Lonnberg called attention to Mr. Howard that one Mr. Carlisle Harrison was standing on the dock of "A" Building, and Mr. Howard—

Q. (Interposing): Can you identify Mr. Carlisle Harrison [610] a little?

(Testimony of Cecil R. Carter.)

A. Mr. Carlisle Harrison was a former employee of the Company, but he was not at that time. And I understand, after investigating, after escorting the gentlemen to the gate, I investigated and he was brought in there by Mr. Gleichman.

Q. And what did you do when Mr.—whoever it was that called your attention to Mr. Harrison—what did you do with respect to that, if anything?

A. I didn't get that.

Q. Well, when your attention was called to Mr. Carlisle Harrison, did you do anything?

A. Mr. Harvey Howard immediately turned around to me and said, "It is mighty funny that the company will allow the other side in here but won't allow us in."

I said "I didn't know Mr. Carlisle Harrison was in the plant, and I will investigate him the same as I investigated you, and if he has no business in here he will be escorted to the gate the same as you are."

Q. What occurred, if anything, after that?

A. I then went upon the dock and asked Mr. Harrison what business he had in the plant. He told me he was brought in by Mr. Gleichman, he was hired by the union to come out there in order to show Mr. Gleichman the employees and help him check their books. [611]

I then asked Mr. Chuck Grube the same question, and he replied the same thing. And we went to Mr. Gleichman, and he told me the Union was paying Carlisle Harrison to come out there and help him,

(Testimony of Cecil R. Carter.)

and he had just as much right in the plant as he did, and according to the contract for the company he had a right to enter that plant at any time to check dues books.

Q. That is what Mr. Gleichman told you?

A. Yes, sir.

Q. Anything else occur?

A. I then went to the telephone and called Mr. Wood and told him what had happened, and Mr. Wood asked me to go to Mr. Gleichman and ask him to ask Mr. Harrison to leave the plant, rather than have him in there and cause any trouble.

So I went to Mr. Gleichman and asked him, and he got quite peeved over it. And he said he wanted to talk to Charlie Wood on the phone. So we went back and called Charlie Wood again, and they had quite a conversation over the phone. And finally he told me that Mr. Wood wanted to talk to me. So I talked to Mr. Wood on the phone then, and he asked me if I had time to go with Mr. Gleichman and Mr. Harrison and stay with them until they left the plant, and see that they did no electioneering. I told him I had the time to do it, and I did. We went through the plant and I heard no electioneering from either one of them. [612]

Q. Now, before that time, when you escorted Mr. Howard and Mr. Luchsinger and Mr. Lonnberg to the gate, was there anybody at the gate at that time?

A. We had a watchman at the gate.

Q. Do you recall his name? A. Otto.

(Testimony of Cecil R. Carter.)

Q. Did any further conversation ensue between yourself or, rather, strike that.

Did any conversation occur between yourself and Mr. Lonnberg in the presence of Mr. Luchsinger and Mr. Lonnberg and Mr. Howard?

A. With Mr.——

Q. In the presence of Mr. Lonnberg with respect to the way they got into the plant?

A. I asked Otto, "What is the idea of letting these men into the plant without them having permission to come in?" and his remark to me was, "I can't see everything."

Q. Did any of these men say anything; Mr. Luchsinger, Mr. Harvey Howard, or Mr. Lonnberg?

A. Nothing that I know of to the watchman.

Q. To yourself?

A. Well, they remonstrated with me quite fiercely on escorting them to the gate, and Mr. Harvey Howard says, "By the way," he says, "what is your name?" I said, "My name is C. R. Carter," and he said, "Well, you haven't heard the last [613] of this." He says, "You will hear more about this." I said, "I work here six days a week."

Q. Do you know what Mr. Harvey Howard's capacity was?

A. It was the first time I had ever met Mr. Howard.

Q. You did not know what his functions were with respect to Mr. Luchsinger and Mr. Lonnberg?

A. I had heard that he was their organizer.

Q. Has any foreman in your department re-

(Testimony of Cecil R. Carter.)

ported to you any incidents where workers in the plant were threatened for wearing A F of L buttons or distributing A F of L literature?

A. No foreman under me has made such a report to me.

Q. Did any worker personally make such a report to you? A. No, sir.

Mr. Hecht: May I have a moment's recess, Mr. Examiner?

Trial Examiner Ruckel: Yes, we will recess for five minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Any further questions by the Respondent?

Mr. Hecht: Yes, sir, Mr. Examiner.

Q. (By Mr. Hecht): Mr. Carter, do you know Mr. Nick Tate? A. Yes, sir.

Q. He was an employee at your plant?

A. He worked in the Raw Stock Department under Mr. Harvey Nelson as foreman. [614]

Q. Calling your attention to the week prior to August 26, did you see Mr. Nick Tate engage in a conversation with Mr. Gleichman, the man who is here, anywhere in the plant? A. No, sir.

Q. Did you specifically hear Mr. Gleichman accuse, or rather, charge Mr. Nick Tate with being an A F of L organizer? A. I did not.

Q. Calling your attention to September 1, 1945, were you at the plant? A. Yes, sir.

Q. Will you tell me if anything unusual occurred

(Testimony of Cecil R. Carter.)

that day? I have reference, Mr. Carter, to the picket line incident outside the plant?

A. Oh, I don't—I couldn't connect any of these dates with any of these times.

Q. Well, you recall the incident?

A. I recall the incident.

Q. Will you relate what occurred to the best of your recollection?

A. Well, the night before Mr. Altman asked me if I could come down to the plant early the next morning, that he had heard that the Business Agents from the CIO were going to check the books on all the employees coming in the gate. And I asked him what he meant by "early," and he said, "six o'clock." I told him I could. [615]

Q. By the way, what time does work start in the morning? A. 7:30 the whistle blows.

Q. Go on, Mr. Carter.

A. I got to the plant possibly a couple of minutes after six o'clock and went to the front gate and there was nobobdy there, nobody from the union had showed up yet. And I thought it was funny that they were supposed to be there at six o'clock. And I don't think they showed up until it was close to six-thirty, as I remember. It could have been a little after or a little before. I don't remember exactly.

Q. By "union men" you mean representatives of the ILWU? A. Yes.

Q. And do you recall the names of any of those ILWU representatives?

(Testimony of Cecil R. Carter.)

A. Mr. Gleichman was there, and quite a few men that I have never seen before.

Q. Yes. Did they enter the plant?

A. They did not.

Q. Did they take a position any place near the plant? A. They stopped at the front gate.

Q. How far away would you say?

A. Well, right at the gate, I would say.

Q. Is there a sidewalk next to the gate?

A. There is a sidewalk to one side of the gate. It stops there. The gate is an automobile driveway. [616]

Q. Yes. And what else occurred, if anything?

A. When Mr. Gleichman came there he asked me if anybody had come in yet, and I told him there were two or three employees had already gotten in, and I named them to him. And he sent one of the men— I couldn't say who— to go in and check those employees' books that had already gotten in.

Q. Anything else of note occur?

A. Well, when the employees started coming in these union men stopped each one as they came in and asked for their union books, and after they looked at them, why, they came on in the plant.

Q. I think you have told me that the Berkeley police eventually got to the plant?

A. Well, after the employees got to coming quite fast they couldn't check the books fast enough, and the automobiles started backing up in the street. That was a little later on.

(Testimony of Cecil R. Carter.)

Q. That is plant employee automobiles?

A. That is right. And the Berkeley police were there and this officer came up and told them they couldn't block the city streets, that they would have to let the cars through. So then the union men came inside the gate and started checking the cars after they came through the gate.

Q. And how long did this take? When did it end, if at all?

A. Well, the whistle blows at 7:30, and I think, as close [617] as I can remember, I think they left shortly after eight o'clock.

Q. Yes. At that time, did you hear any union representative make any threat to any of the employees?

A. One of the employees came up there and was quite mad about it and wanted to push his way through, and said they had no right to stop him; a man by the name of Stone.

Q. Yes.

A. And they finally told him he could not go in unless they saw his book. I don't know whether he got his book out and showed it to them or not, but he finally went on in the plant and went to work.

Q. Any other incident of similar nature, do you recall?

A. That is the only one that I know that ran into trouble. There were some of the others that didn't go in, though.

Q. Yes.

(Testimony of Cecil R. Carter.)

A. They were handed letters and told they couldn't go in.

Q. Were you aiding the union officials in this check-up? A. I was not.

Q. Did you yourself prevent any employee from coming into the plant? A. I did not.

Q. Do you know an employee by the name of Alden Lee? A. I do.

Q. Did Mr. Alden Lee on this very day say to you, "What [618] the hell is going on here?"

A. Something to that effect.

Q. And what did you say?

A. I said, "They are checking up on union books."

Mr. Hecht: That is all.

Trial Examiner Ruckel: Questions by the CIO?

Mr. Edises: No questions.

Cross Examination

By Mr. Royster:

Q. Mr. Carter, have you seen Mr. Gleichman in the Respondent's plant on more than one occasion? A. I didn't get the first of that.

Q. Have you seen Mr. Gleichman in the plant on more than one occasion?

A. I have seen him numerous times.

Q. Have you seen Mr. Duarte in the plant?

A. I have.

Q. Have you seen Mr. Gonick in the plant?

A. I have.

(Testimony of Cecil R. Carter.)

Q. Have you ever seen them in the plant unaccompanied by any representative of the management? A. Yes.

Mr. Royster: That is all.

Mr. Rowell: No questions.

Mr. Hecht: Just one more question.

Redirect Examination

By Mr. Hecht:

Q. Mr. Carter, did you form any opinion as to why there was this check-up of dues books?

Mr. Royster: I am going to object to that. I don't think it is material.

Trial Examiner Ruckel: This man took no part in determining the discharge, did he?

Mr. Hecht: No, but, as I understand it, testimony was admitted here on the ground he was part of this company's state of mind.

Mr. Royster: I tink I can say that none of the Board's testimony was to show the state of mind of Mr. Carter.

Mr. Hecht: Well, the testimony as to the threat of the accusation against Mr. Tate was tied up to Mr. Carter, and I assume that the reason for tying it up is to show knowledge on the part of the company.

Mr. Royster: Yes, but I don't think your premise follows from that.

Trial Examiner Ruckel: It is a little different. read the question, please?

(Testimony of Cecil R. Carter.)

(The question referred to was read by the reporter.)

Trial Examiner Ruckel: He may answer.

A. I was told by a Union Business Agent (as I remember, Mr. Gleichman made the statement) that the dues books were in such a mess that it was going to be an awful headache getting them straightened out. [620]

Q. (By Mr. Hecht): You formed no opinion, but this was stated to you?

A. That is all I had to go by.

Mr. Hecht: That is all.

Mr. Rowell: Could I ask one question?

Recross Examination

By Mr. Rowell:

Q. You mentioned the delivery of these letters, letters by the CIO Union.

A. I didn't hear the first part of your question.

Q. I was asking about these letters. I think you testified that the CIO Union people at the gate delivered some letters to certain of the employees as they came to the gate. A. That is right.

Q. Is that right? A. That is right.

Q. These letters, they had them prepared already in their hands?

A. They were in an envelope.

Q. They would pull the out of the envelope and deliver them to these people?

A. They handed the employees the envelope, and

(Testimony of Cecil R. Carter.)

the ones they handed the envelope to, they told them they couldn't go in.

Mr. Rowell: That is all.

Mr. Royster: Nothing further. [621]

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Hecht: Mr. Stanberry, will you take the stand, please?

DON E. STANBERRY

called as a witness by and on behalf of Colgate-Palmolive-Peet Company, Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hecht:

Q. Mr. Stanberry, will you give your name for the record, please?

A. Don E. Stanberry, S-t-a-n-b-e-r-r-y.

Q. And what is your business or occupation?

A. I am Production Supervisor, Colgate-Palmolive-Peet Company, Berkeley.

Q. And how long have you been employed at Respondent's plant? A. Since 1935.

Q. And you were employed in your present capacity all during the months of July, August, and September? A. I was.

(Testimony of Don E. Stanberry.)

Mr. Hecht: Mr. Examiner, I am sorry. May I recall Mr. Carter?

That is all right. Let it go.

Q. (By Mr. Hecht): Do you know a Mr. Albert Zulaica? [622] A. I do.

Q. During the month of August did Mr. Zulaica come to you with a complaint about having been threatened for wearing an AF of L button and electioneering for AF of L?

A. Perhaps, direct; either directly or indirectly. I don't remember whether it was directly from him or through his foreman.

Q. Do you recall the nature of the complaint?

A. Well, the complaint was that Charles Leacock and other identified colored people were threatening the men at night.

Q. Was the reason for the threat given you?

A. I believe they stated it was connected with wearing AF of L buttons.

Q. Did you take any action in connection with that? A. I did not.

Q. Did you speak to Mr. Zulaica about the matter? A. Yes, I did.

Q. By the way, what was Mr. Leacock's position?

A. Mr. Leacock was porter, and he was also a CIO Steward.

Q. I take it Mr. Leacock did not hold any foreman's position, any supervisory position?

A. He held no supervisory position whatsoever.

Q. Did you hold a conversation with Mr. Zulaica

(Testimony of Don E. Stanberry.)

with respect to his dealings with Mr. Leacock? [623]

A. Yes, I did.

Q. And will you give us the burden of the conversation?

A. Well, it was more in the nature of a request from Zulaica for advice as to what to do in the situation, the general situation as well as this particular incident. And I went over the whole situation with him from beginning to end, and pointed out that the best legal advice we had been able to obtain substantiated the fact that our present CIO contract was valid, and that that required that anyone working for the company would have to be a member of the CIO Union, and also be in good standing. I also pointed out that what meant to be in good standing we did not know, and the union had never told us the exact reason for the previous dismissals or suspensions, I should say, other than that they were not in good standing.

Q. Did you advise him that Mr. Leacock had as much a right to express an opinion in the controversy as anybody else? A. That is quite true.

Q. Did you advise him to avoid controversy with Mr. Leacock?

A. Well, I told him the best thing was to try to smooth it over as easily as he could.

Q. Mr. Stanberry, were you in the plant September 1, 1945? A. September 1? Yes.

Q. Yes. Do you recall the occasion when something like 18 [624] employees were called into Mr. Railey's office? A. Yes, I was there.

(Testimony of Don E. Stanberry.)

Q. And do you recall Mr. Railey stating that he had never wanted a union in the first place, that now the employes had it they had to take the consequences?

A. I did not hear him make such a statement.

Q. Did you hear anything substantially to that effect? A. I did not.

Q. Did you hear either Mr. Railey or Mr. Wood or Mr. Altman, or either of them, state that the reason they were in such a mess is because they were wearing AF of L buttons? A. I did not.

Mr. Hecht: I think that is all.

Mr. Edises: No questions.

Trial Examiner Ruckel: Questions?

Mr. Royster:: No questions?

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Hecht: Mr. Wood.

Mr. Wood: Do you swear me again, or have I been sworn?

Trial Examiner Ruckel: You have been sworn, so I won't swear you again.

CHARLES WOOD

called as a witness by and on behalf of Colgate-Palmolive-Peet [625] Company, Respondent, having been previously sworn, was examined and testified as follows:

(Testimony of Charles Wood.)

Direct Examination

By Mr. Hecht:

Q. Mr. Wood, you have already stated your name, haven't you? A. Yes, sir.

Q. And you have already given your employment with the Respondent? A. Yes, sir.

Q. You have been employed approximately 25 years? A. 25 years.

Q. And in addition to your position or function as a Purchasing Agent, what other functions do you perform for the Respondent?

A. I handle the labor relations.

Q. Will you expand a little more on that, if you will?

A. Well, I attend to the negotiations with the committee, make the decisions with respect to the labor matters.

Q. Yes. And, if it isn't digressing too far, I do not direct the labor in the factory. After the help are in there, why, the factory people handle it. I have nothing to do with that. But if a dispute comes up that is of sufficient importance so that it cannot be settled by the foreman and a meeting is necessary, I take charge of that meeting and make the company's decisions. [626]

Q. Mr. Wood, were you at the plant— let's put it another way.

Were you in Berkeley on July 26, 1945?

A. I was.

(Testimony of Charles Wood.)

Q. Did you have any knowledge of the dinner meeting held by the employees on July 26?

A. I did not.

Q. Were you in the plant July 28?

A. No, sir.

Q. Where were you on July 28?

A. At home.

Q. Did you arrive at the plant at all?

A. I didn't visit the plant at all.

Q. Did you on that day call Mr. Altman, or did Mr. Altman call you?

A. I called Mr. Altman.

Q. How did you come to learn of the notice posted on July 28, 1945?

A. When I called him I asked him if there was anything doing, and he told me "No." Having in mind— well, I don't know whether I ought to say that or not. So much goes here I don't hardly know where to stop.

Mr. Royster: Well, nobody stopped you.

Mr. Hecht: Will you read Mr. Wood's partial answer?

(The answer referred to was read by the reporter.) [627]

Q. (By Mr. Hecht): Well, Mr. Wood, did the notice, or the advice you received with reference to the notice, mean anything to you?

A. It did not.

Q. Did the title "Employees Welfare Association" suggest anything to you?

(Testimony of Charles Wood.)

A. Well, somewhat vaguely. I had in mind that perhaps they were geting up some sort of a welfare association. They have similar things in other plants, independent of the unions, that have credit facilities for men banking.

Q. To put it in other words, Mr. Woods, it didn't strike you as a collective bargaining agency?

A. Not at all, not at all.

Q. Yes. On July 29 were you in Berkeley, or at the plant? A. I was not.

Q. On July 30? A. No.

Q. On July 31? A. No.

Q. Where were you on those dates?

A. At Portland.

Q. At Portland. While at Portland did you come to hear of some of the matters that have been testified to here? A. Yes, sir.

Q. Who advised you as to them? [628]

A. Could I ask you to be a little more explicit?

Q. Who told you about it?

A. Well, the first thing, I had been unable to get the plant on the phone all day. The telephone lines were badly congested, evidently. It was a Monday, about eight o'clock at night I succeeded in getting Mrs. Sellers, my secretary, on the phone, and discussed certain matters pertaining to purchasing with her, materials. We were badly short of many critical materials at this time. And she says, "Have you heard from anybody that they let out a number of men today?" I says, "No, I did not."

(Testimony of Charles Wood.)

Q. What date was this, Mr. Wood?

A. That was on July 30.

Q. Yes. A. Late in the evening.

Q. Did you eventually hear from Mr. Railey or Mr. Altman?

A. Not until the following morning.

Mr. Royster: The witness has not concluded his testimony with respect to what he heard from Mrs. Sellers.

The Witness: Do you want the conversation from Mrs. Sellers?

Trial Examiner Ruckel: Have you finished your conversation on the phone with your secretary?

The Witness: Yes, except she said that they were the stewards that were let out. I asked her if she knew why. She [629] said, "No," that they had been busy all day and hadn't got the particulars.

Q. (By Mr. Hecht): Did you eventually talk to Mr. Altman or Mr. Railey?

A. I talked to Mr. Railey.

Q. And what information——

A. (Interposing): The following day.

Q. That is July 31? A. Yes, sir.

Q. What information, if any, did he give you with reference to the incidents of July 30 and 31?

A. He told me the story of what has been testified here today.

Q. Testified by Mr. Railey or the other porsons here?

(Testimony of Charles Wood.)

A. Well, he told me that— well, may I tell the story, what he told me?

Q. Well, concisely, if you will.

A. Yes. He told me that the day before, early in the morning, the CIO had demanded the release of Messrs. Marshall, Smith, Haynes, Luchsinger, and Moreau. And I asked him why. Well, he said they brought out a letter demanding that we release them as they were not in good standing with the union, and they could not be employed until the matter of their suspension had been determined. He read the letter to me, in fact. [630]

Q. Did you inquire of Mr. Railey whether he had asked the reason for their not being in good standing?

A. I asked him if he knew what was back of it all, and he said he didn't, that he was at a loss to understand it.

Q. When did you return to Berkeley and to your occupation?

A. I arrived on the Cascade, that got in around two o'clock on August—Wednesday, August 1. I —let me coordinate those dates. I think that is right.

Q. Did you go to the plant?

A. I went to the plant immediately.

Q. And what did you find there?

A. I found the plant shut down.

Q. And for how long was the plant shut down, Mr. Wood?

(Testimony of Charles Wood.)

A. The plant was shut down that afternoon and the following day.

Q. In other words, there was a work stoppage at the plant? A. A work stoppage, yes.

Q. Were you aware at that time, Mr. Wood, that the ILWU had a no-strike pledge for the wartime?

A. I was very well aware of it.

Q. Did you get any information from any source respecting the work stoppage and the suspension of the five stewards and four committeemen from any source at that time when you returned?

A. From Mr. Railey. [631]

Q. Did he expand further on what he told you over the phone?

A. No, he told me substantially the same thing. He told me the history of everything that had happened up to date, how he had gone to the meeting, and the meetings that had been held, that he knew of.

Q. Did you have any opinion as to the probable cause for the discharge of the five stewards, Mr. Wood?

A. Well, not definite at that time at all.

Q. On what was it based?

A. I beg your pardon?

Q. On what was it based, such opinion as you had?

A. Well, I knew of the no-strike pledge, I had heard that the stewards had been in difficulty with the union for not carrying out the anti-racial discrimination policy.

(Testimony of Charles Wood.)

Q. Had you heard of any previous trouble that the stewards had had with the union, directing your attention to about December, 1944?

A. December, 1944?

Q. Maybe I am in error as to the date.

A. Well, that is a long time back, that was nearly a year. I had heard of— I had heard that the Stewards had been summoned before the— some regulatory body of the union and censured for not carrying out the anti-racial discrimination policy, but whether it was December or not, as far back as that, but it was quite a long period before the first of August back.

Q. Had you heard anything in connection with failure to check on dues paying?

A. I had not at that time.

Q. Had you heard anything in connection with failure to get the men who were not ILWU to come into the ILWU? A. Not at that time.

Q. Not at that time. Did you and Mr. Railey do anything about getting legal counsel in connection with the interpretation of your collective bargaining agreement with the ILWU?

A. Yes, sir.

Mr. Rowell: Well, Mr. Examiner, that is a similar inquiry that I tried one time.

Mr. Hecht: That state of mind of these persons, Mr. Examiner.

Mr. Edises: A question of good faith enters in here, Mr. Examiner.

(Testimony of Charles Wood.)

Trial Examiner Ruckel: He may answer.

A. Yes, we did.

Q. (By Mr. Hecht): And what is it you did?

A. Well, when I returned Mr. Railey showed me a letter from Clark & Heafey.

Q. What are they?

A. Attorneys. They had been our regular attorneys in [633] Oakland. In which they advised that——

Mr. Royster (Interposing): May I interrupt here? It seems to me that it is perfectly pertinent to show that the company sought legal advice, and I think that has been shown. Now, it seems to me further that it can only be shown that the company did or did not act in accordance with that advice. Now, just what they did, or what the advice was——

Mr. Hecht (Interposing): Yes, I will cut that short, Mr. Royster.

Q. (By Mr. Hecht): And did you act in accordance with that advice? A. We did.

Q. Directing your attention to Section 3 of the contract, were you advised that you had to comply with the terms of that Section 3 strictly?

A. We were.

Q. Were you further advised that you could not set yourselves up to judge the justice of putting these men in bad standing? A. We were.

Q. And you acted accordingly?

A. We did so.

Q. Were you at the plant on or about August 17, 1945? To refresh your recollection that is the

(Testimony of Charles Wood.)

date when the 9, to-wit, the five stewards and the four committeemen, came and [634] asked for their employment? A. Yes, sir; yes.

Q. Well, will you relate in your own words, give your version of that incident?

A. I was in my office, and Mr. Altman came and said, "Will you come over to my office with me? Those nine fellows"—I think was his language—"that were suspended are over there and want to go back to work."

I retired to his office with him, and there were that group. Do I need to name them?

Q. No, we know who they are already sufficiently.

Trial Examiner Ruckel: No.

A. The group were in there, and they were in their working clothes. Some of them had their lunch boxes with them. And Mr. Sherman, with a gesture of both hands, says, "Well, we are here to go to work." And, to the best of my recollection, I fell back on our legal advice, that "We have a contract with the CIO, and you have been suspended on their order for violation of the constitution and by-laws, and we must observe that contract. I am very sorry, but I don't see how we could put you back to work under the conditions. You will have to remain out until the issue has been determined between you and the CIO."

Q. Calling your attention, Mr. Wood, to August 30, 1945, did you on that date have a conversation with Mr. Hack [635] Gleichman?

(Testimony of Charles Wood.)

A. I think so, there about that date anyway.

Q. Will you tell us the substance of that conversation as well as you can recollect it?

A. Well, my recollection of the conversations of August 30 and 31 are pretty well merged together. If it is permissible——

Q. (Interposing): Well, if you can, please give it to us chronologically. Let's stick first to the August 30 events, if you will.

A. Well I think it was August 30 that he came to me and he had a list of employees that he wanted us to let out. It was a long list. He had two sheets of this eight and a half by thirteen blue-lined paper such as we are using here, and in addition to that a first sheet that was in front of the others that had been torn off, and he had, maybe, a quarter or a third of that sheet at the top of the paper, and he had a list of names there, and he handed me that—wanted to hand me that sheet of paper, and demanded that we release that group immediately. I didn't take the sheet from him, but I wanted to see what was on it, nevertheless. And as he turned the sheet, I noticed that the first page was completely filled with names, I might say the first part of a page was completely filled with names, the second page was completely filled, and the third page was filled down within maybe five or six lines of the bottom of the page. And he says, "These [636] people here are in bad standing, and some of them, their dues aren't paid," and he says, "We want you to let them out right off."

(Testimony of Charles Wood.)

I laughed at him and told him to "Go to hell," and that I was not going to act on any such order, that if he had anything like that, that I wanted a letter from the union signed by some duly authorized officer, notifying us to that effect.

Well, he says, "I will get you one." I said, "Well, this thing has gone too far. You are getting too many people involved here. Why, the first thing you know, if this keeps on, we will be shut down," and I says, "I want to talk to Mr. Heide about this thing before we get into this thing any deeper."

He says, "All right, I will see if I can get him to come out here," and Mr. Heide came out, and we discussed the thing. And I pointed out again to Mr. Heide—he had Mr. Duarte with him, that it was taking too many men out of the plant, and that it was seriously—any such number of men would seriously interrupt our operations, that there were men there in key positions.

Well, he, Heide, arose and said, "Well, we will talk it over and let you know."

Now, afterwards I counted on one of my own sheets the number of lines on those sheets, and from the number of names, [637] the appearance of the sheets, the number of names, I estimate that the sheet that Mr. Gleichman wanted me to take to let them out——

Pardon me. Let me start over again.

I would estimate that the number of men that he had on the sheets which he wanted me to take and then let out that group of men comprised be-

(Testimony of Charles Wood.)

tween, oh, 60 and 65 names; maybe possibly 70.

Q. Did you count the names on Mr. Gleichman's sheet, Mr. Wood?

A. I observed that the first sheet was 25 or 30 per cent filled.

Q. Yes.

A. No, that was 25 or 30 per cent of the length of the full sheet was filled with names, the second sheet was filled with names, the third sheet was filled with names down to within, oh, two or three inches of the bottom of the page.

Q. Did Mr. Gleichman give you any reason for wanting to have you remove these men?

A. Well, he said they were in bad standing, that they were no good, and that they—a lot of them weren't up in their dues, and I terminated the conversation as quickly as I could.

Q. Well,—

Mr. Rowell (Interposing): Let him finish his answer. He [638] is doing fine.

Mr. Royster: This is very interesting.

Q. (By Mr. Hecht): Can you be a little more concise, Mr. Wood?

The Witness: Would you read back my answer?

(The answer referred to was read by the reporter.)

The Witness: In addition to that, I think he said there were a large number that were not members of the union.

Q. (By Mr. Hecht): I see.

A. I think that is about the substance of the con-

(Testimony of Charles Wood.)

versation, except he kept reiterating his demand that we release the whole list.

Q. Eventually did you get a letter from the union? A. We did.

Q. On what date?

A. Mr. Altman reported to me that that morning, over the phone, he had received a letter from the union demanding the release of, I think it was 18 men. It might have possibly been 19. I have forgotten. That it was handed to him by Mr. Gleichman.

Q. Yes. And that is the number of men that you called into your office, I believe, on September 1? A. Yes, sir.

Q. Will you tell me what occurred on that occasion?

A. Well, I told Mr. Altman to—— [639]

Q. (Interposing): Oh, let me digress for a moment.

When you were handed that list of 17 men did you again seek legal advice?

A. When Mr. Altman phoned me that he had that list of names I told him—I was not at the factory, I was home—that was again a Saturday. I do not usually go to the plant on Saturdays.

Q. Yes.

A. And I told him, "Sit tight until he heard from me."

Q. Yes.

A. I attempted to contact Mr. Crum, who was

(Testimony of Charles Wood.)

our attorney, and he was out of the city. I was advised, I think, that he was at his summer home. I was unable to get him. Mr. Altman called me again, and I told him to continue to wait, that I wanted to get hold of Heide and see if we could prevail upon him to cancel the request.

Well, he says, "Mr. Gleichman is putting the heat on me pretty heavy for immediate action." Well, I says, "He is not offering to kill you," or words to that effect. And he says, "No." Well, I says, "You sit tight until you hear from me."

I think there were several such conversations until about 1:30 Mr. Altman called me again and says that he was unable to hold Mr. Gleichman off any longer, that he wanted to—us to take immediate action. Well, I says I had been [640] trying to get Mr. Heide and I had been unable to do so. "I think I will come down."

Well, he says, "Do you want me to call Railey and get him to come over?" Well, I says, "I think that will be a good idea. You might get him at the Claremont Country Club."

He called the Claremont Country Club and evidently got Mr. Railey.

I changed my clothes and shaved and came down to the plant and found Mr. Railey there in his office when I got there. I was shown the letter, and we discussed the procedure that we would follow to let out such a large group of men.

Mr. Railey wanted to soften the blow as much as possible. A lot of them had been there a long time

(Testimony of Charles Wood.)

and he didn't like them to think we were just throwing them out without any consideration. So it was decided that we would call them down into his office. And Mr. Altman took the responsibility of having all these people notified that they should come down. It took some little time to gather them. But after they got there, why, we showed them the letter and told them that we were very sorry but under the terms of our contract we had no alternative except to abide by its terms.

Q. Were Mr. Carter and Mr. Stanberry there?

A. Mr. Carter and Mr. Stanberry were in the office, Mr. Railey was there, Mr. Altman, was there, and these 18-odd people that—I don't need to recite their names, do I? [641]

Q. No. Did you at any time during the course of that meeting state to anyone present that the reason they had gotten into this mess was because they were wearing A. F. of L. buttons?

A. I did not.

Q. Did you hear Mr. Railey make such a statement? A. He did not.

Q. Did you hear Mr. Altman make such a statement? A. I did not.

Q. Is it possible that they could have made such a statement and you can't remember it now?

A. I would have remembered it if I heard it.

Q. Did you hear Mr. Railey state that you hadn't wanted the union in the first place and the employees now could take the consequences?

A. Mr. Railey made no such statement.

(Testimony of Charles Wood.)

Q. Was anything said by any one of these 18 employees that were there present at the time?

A. Well, I should say so. When they first started, came in, Mr. Railey said a few words to them, and then he asked me to sit down in his chair and explain to them the whole situation. I read the laws out of the contract, and told them again—as a matter of fact, I think that statement was made repeatedly in the meeting, that under the terms of the contract we had no alternative except to accede to the demand [642] of the union with respect to suspending these men until the case had been settled. The longer the meeting lasted, why, the louder it grew, and it was not a great while before everybody was talking in loud tones of voice, and except the people you were talking to it would be very difficult to tell what anybody else was saying.

Q. Mr. Wood, you were present here when Mrs. Kay Norris made the statement——

A. I was, yes.

Q. Or, rather, testified that she made certain statements to you. Did you make such statements?

A. I have forgotten what they were.

Q. She had asked you whether the reason they were being put in bad standing was because they had worn A. F. of L. buttons and distributed A. F. of L. literature?

A. I don't remember of her having said that.

Trial Examiner Ruckel: Just a moment.

Q. (By Mr. Hecht): You have heard her testimony that you said, "Maybe that is the reason?"

(Testimony of Charles Wood.)

A. No, I don't recall any such statement.

Q. I see. When you called Paul Heide about this list of 18 did you ask him the reason why these men and women were being put in bad standing?

A. I did.

Q. What answer did you get from Heide? [643]

A. He said that they had violated their oath, the constitution and by-laws and their oath of office, their office of—the oath they took upon initiation; excuse me.

Q. Did you make a bona fide effort, Mr. Wood, to press Mr. Heide for further details?

A. I certainly did.

Mr. Royster: I object to the form of that question.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Hecht): Well, did you make any further effort?

A. I made further ones, yes, and I had made previous ones.

Q. And that is the most satisfactory answer you got?

Mr. Royster: I object to that. That is leading, for one thing, and suggestive.

Q. (By Mr. Hecht): Well, that is all you got?

A. That is the only answer I ever got.

Q. All right. On September 1, 1945, or let us even carry it further, September 15, 1945, had you, Mr. Wood, formed any definite opinion for the reason why these men were being put in bad standing by the union?

(Testimony of Charles Wood.)

A. No, I hadn't. I was somewhat bewildered.

Q. What was the reason for your bewilderment?

A. Well, I didn't think that it was only for union activities alone, or anti-union activities alone, because many people had not been disturbed that I had observed wearing buttons and passing out literature. [644]

Trial Examiner Ruckel: What kind of buttons and what kind of literature?

The Witness: The A. F. of L. buttons.

Q. (By Mr. Hecht): Are some of those persons still in your employ, Mr. Wood? A. They are.

Mr. Hecht: Do you gentlemen care for the names?

Mr. Royster: I don't want them.

Trial Examiner Ruckel: What is the question?

Mr. Rowell: The question is, who passed out A. F. of L. buttons in the plant.

Mr. Hecht: That are still in the employ of the company.

Trial Examiner Ruckel: What was your question?

Mr. Hecht: I was asking the gentlemen——

Mr. Rowell (Interposing): If he knows them.

Mr. Edises: I submit it would be a matter of development by counsel for the prosecution if they have any questions as to——

Trial Examiner Ruckel (Interposing): I think we better leave it there. I think it is of some importance that there were others who wore buttons and passed out literature whose discharge was not

(Testimony of Charles Wood.)

requested. It might have been that they subsequently got themselves in good standing. I don't know.

Q. (By Mr. Hecht): Did those persons, Mr. Wood, to whom you have reference, continue to wear the A. F. of L. button and [645] pass out the A. F. of L. literature up to and including the date of the election? A. They did, sir.

Q. Are those persons still in your employ?

A. They are.

Mr. Hecht: Mr. Examiner, may we go off the record?

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Read the last question and answer, please.

(The question and answer referred to were read by the reporter.)

Trial Examiner Ruckel: Any further questions?

Mr. Hecht: Yes, Mr. Examiner.

Q. (By Mr. Hecht): Reverting to that meeting, so-called, of September 1, 1945, have you covered all of what was said in your recollection at that meeting, Mr. Wood?

A. Well, having in mind the statement that Mr. Railey is accused of making, I recall that Kay Norris started quite a discussion about the legality of the contract, and said that she had taken—had legal advice, she had a lawyer of her own that knew more

(Testimony of Charles Wood.)

about it than our lawyers or the CIO lawyers either, and that they said that the contract was no good. And throughout the whole meeting there was a whole lot of recriminations all over the room. You heard different [646] people saying that the officers of the CIO were a bunch of Communists and a bunch of crooks and they didn't properly account for the money, and she was among those that said it. And then the remark was repeatedly made, "Well, what good has the union done us for the last three years? We have been paying dues month after month and they haven't gotten us any raises in pay."

Well, I turned to her then and I said, "Well, it is your union; it is not ours."

Trial Examiner Ruckel: Did you say something about having selected the union in the first place, something to that effect?

The Witness: No, I did not.

Trial Examiner Ruckel: I think yesterday the word "selected" was used in some connection. I don't remember.

The Witness: No, I did not. I do not recall that language. I said, "It was your union." I might have said, "You picked it." I did say that it was not ours.

Q. (By Mr. Hecht): Mr. Wood, were you present yesterday or the day before (I don't recall) when Mr. Henry Hellbaum was present?

A. Yes.

Q. Do you recall his testimony? A. I do.

(Testimony of Charles Wood.)

Q. With reference to a conversation had with you? [647] A. Yes.

Q. Will you give us your version of that conversation and the incidents leading to it?

A. Well, somebody called me on the phone and told me that Hellbaum was down in the basement and was holding a meeting of the entire group of employees in that department. I think it was Grube that called me. Well, I says, "Run him out of there. They have no business doing that in working hours, and I will come down and talk to him."

I went down to the basement, and by the time I had gotten there the meeting had broken up, and Hellbaum was no longer there. I then went down to the boiler room and looked around for him. He was not there. And I asked where he was. I think one of the foremen, it was, that told me, "Well, you will find him in the Toilet Articles Department now."

I went over to the Toilet Articles Department, and he was there with a small group of employees. And I called him to one side and told him that the company had got to remain neutral, and that it was impossible to let him around assembling the employees for the purposes of electioneering."

Q. This was a work period at the plant?

A. A work period, yes.

Q. Was Mr. Hellbaum supposed to be at his work at that time?

A. Well, I also suggested that he better get back in the [648] boiler room where he belonged,

(Testimony of Charles Wood.)

that he had had a bad accident down there once and we didn't want a repetition of it.

Q. As to the five shop stewards and the four committeemen, did you eventually get word from the union, or from some union representative as to their status in the union, final status in the union?

A. I did.

Q. And what information did you get with respect to them, and about when, Mr. Wood?

A. Well, it was around, oh, I should say the middle of November. My memory is hazy when it occurred.

Q. Yes.

A. It might have been a little later, it might have been a little earlier, but I was told that they had refused——

Q. (Interposing): Who told you, Mr. Wood?

A. George Squires, one of the stewards, one of the present stewards in the plant, and who was steward at that time. I was told, as I remember it, that they had refused to stand trial and had been expelled from the union.

Q. Did he tell you as to the charges that had been made against them?

A. I think he did, that they had been derelict in their duty as stewards and hadn't carried out the anti-discrimination, racial discrimination policy, and that they had been involved in a strike durng the war. [649]

Q. Yes.

(Testimony of Charles Wood.)

A. Controvening the no-strike pledge of the union.

Q. Did you eventually find out with respect to the status of the people who had been put in bad standing on August 30, 31, September 1?

A. I did.

Q. And on what date did you receive such information?

A. Oh, it was in early January, I would say.

Q. And who gave you that information?

A. George Squires and Ed Bopp told me, not together, but separately.

Q. And what was the nature of that information?

A. Well, that a certain number of them had stood trial and had been—had pleaded guilty and had been—there had been some arrangement made whereby they would be permitted to work out of the union hall.

Q. How about the others?

A. And that the others had refused to stand trial, and I believe that they had been expelled from the union.

Q. And were you advised specifically or generally as to the nature of the charges?

A. Yes, I asked them, and it was the no-strike pledge and also the anti-discrimination policy for some of them.

Q. Have you since that time heard anything else?

A. Well, I believe we got a notice from the

(Testimony of Charles Wood.)

union, too, [650] advising us of the results of the trial.

Q. Are you a subscriber to or do you receive the ILWU Dispatcher? A. I do, sir.

Q. Did you read an account of the so-called trial or hearing?

A. I read the account in that paper.

Q. All right. Have you ever been advised categorically by anyone that these men were placed in bad standing because of their A. F. of L. activities?

A. I was not.

Mr. Hecht: I think that is all.

Mr. Edises: I just have one or two minor things I would like to ask you about.

Q. (By Mr. Edises): You stated that the list that Mr. Gleichman showed you had—I think you mentioned the figure of around 75 or 74? Is it possible that the number on that list was 44?

A. It might be possible. I wouldn't be exact because I didn't have an opportunity to count them. It was just a glance taken trying to visualize the number of lines on the paper that were filled out.

Q. Yes.

A. And then counting them afterwards on one of my own sheets.

Q. O.K. In connection with this complaint made by Mr. [651] Grube, that there was a meeting being held, was that meeting being held in his department, Mr. Grube's department?

A. That is what he said.

Mr. Edises: That is all.

(Testimony of Charles Wood.)

Trial Examiner Ruckel: Questions by the Board?

Cross-Examination

By Mr. Royster:

Q. Has Board's Exhibit 7 ever been posted in your plant, Mr. Wood?

A. (Examining Document): I believe it was a mimeographed copy; mimeographed copies were made and handed to all the members.

Q. Was it ever posted on your bulletin board?

A. My recollection is that it was.

Q. Do you remember about when it was posted?

A. A few days after it was executed.

Q. Yes. That was in 1941? A. Yes.

Q. And do you recall how long it remained posted? A. I wouldn't pretend to say.

Q. Now, Mr. Wood, I am going to read a portion of a paragraph in Board's Exhibit 14 and then ask you a question about it. I am reading from Paragraph 4 of the appropriate unit: "——all production, maintenance, warehouse, mechanical and laboratory employees at the company's Berkeley, California, plant, including non-technical and non-professional [652] laboratory employees, watchmen, assistant foremen, and working foremen, but excluding office and clerical employees, chemists, foremen and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, con-

(Testimony of Charles Wood.)

stitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act."

Now, is that the bargaining unit which is now covered and has been covered by the contract with the ILWU?

Mr. Hecht: Don't answer, Mr. Wood.

A. I——

Mr. Hecht: Don't answer, Mr. Wood.

Trial Examiner Ruckel: There is an objection. The contract is in evidence.

Mr. Hecht: The contract is in evidence. That would be asking for the conclusion of the witness on a matter that the Board has to determine.

Mr. Royster: This witness is the manager and the director of labor relations.

Mr. Hecht: Do you want to qualify him and make him your own witness?

Mr. Royster: You qualified him.

Trial Examiner Ruckel: Let's hear counsel.

Mr. Royster: He is the director, as I say, of labor [653] relations for the company, and I certainly submit that he is competent to tell us what unit was covered by the ILWU contract.

Mr. Edises: We will join in the objection.

Trial Examiner Ruckel: What is the reason for the mental exercise?

Mr. Royster: I want to know whether or not foremen have been excluded from the coverage of that contract.

(Testimony of Charles Wood.)

Mr. Hecht: Well, you excluded them, not the manager of labor relations at this——

Mr. Royster: Well, Mr. Hecht, I know what the Board has done. I am asking this witness what the practice is.

Mr. Hecht: I still object to the question, Mr. Examiner.

Trial Examiner Ruckel: Well, the objection has been sustained to one question, but there is another question now concerning foremen.

Q. (By Mr. Royster): Mr. Wood, have foremen been included in the bargaining unit represented by the ILWU at your plant?

Mr. Edises: Objected to on the ground the contract speaks for itself.

Trial Examiner Ruckel: Objection sustained.

Mr. Royster: Well, let's see if the contract speaks for itself.

The contract says, Section 2, "The union is hereby [654] recognized as the sole collective bargaining representative for all employees covered by this agreement."

Now, does that sort of double talk describe a unit?

Mr. Edises: Well, now, I would like to point out.

Trial Examiner Ruckel: What is the relevance anyway?

Mr. Edises: I would like to point out to the Board's representative that if he is interested in the question of what employees are covered by the agreement there has been from time to time exe-

(Testimony of Charles Wood.)

cuted—not executed, but simply a list typed of agreed wage categories which shows the various persons who were covered by the agreement.

Mr. Royster: But, Mr. Edises, I believe that no such wage classifications are to be found in the contract as introduced and admitted in evidence, so, therefore, the contract does not speak for itself.

Trial Examiner Ruckel: Well, let's get down to cases. You are talking with reference to this foreman, whoever he is.

Mr. Hecht: Charles Grube, I imagine is the person, Mr. Examiner.

Trial Examiner Ruckel: Grube. Well, suppose that he is a member of the Union and not in the appropriate unit, what difference does it make?

Mr. Royster: Well, he is excluded from the unit because he is a foreman. [655]

Mr. Edises: I would like to know the significance of that.

Trial Examiner Ruckel: He can still belong to the union.

Mr. Royster: Certainly he can belong to the union, so can Mr. Wood belong to the union.

Trial Examiner Ruckel: Apparently Mr. Grube does belong to the union.

Mr. Royster: Yes. That doesn't make him by that fact alone not a representative of the company, and it doesn't excuse the company for anything that Mr. Grube may have done.

Trial Examiner Ruckel: Are you addressing yourself now to the so-called espionage allegations?

(Testimony of Charles Wood.)

Mr. Royster: Not necessarily. There is testimony in the record of several instances which concern Mr. Grube.

Mr. Edises: I submit that my recollection is that Mr. Grube was mentioned in connection with this incident of sitting outside the union hall.

Mr. Royster: He was.

Mr. Hecht: He also was mentioned by Mr. Hellbaum. Mr. Hellbaum charges Mr. Grube with telling him to get the hell out of his department with that AF of L button, or words to that effect. It is in the record.

Mr. Royster: There was testimony by Mr. Periera too as to——

Mr. Hecht: That was Periera, I think. I was mistaken [656] about Hellbaum.

Trial Examiner Rackel: I don't quite see the force of it anyway. As far as getting out of the department, that clearly was his prerogative as a foreman, if he was a foreman.

Mr. Royster: Of course.

Trial Examiner: Irrespective of whether he was a member of the union.

Mr. Royster: No, but Mr. Hellbaum testified, if I recall it correctly (and, of course, the record will show whether I am correct or not) that he accused Mr. Grube of telling employees working under Mr. Grube that they must take off their AF of L buttons or go home. The testimony of Mr. Hellbaum was that Mr. Grube admitted that statement. Now, the question becomes pertinent, it seems to me,

(Testimony of Charles Wood.)

and material as to Mr. Grube's authority, and one criterion with respect to his authority, I think, can be found by reference to whether or not he was in the bargaining unit.

Trial Examiner Ruckel: Well, if you argue that way then you would say that he had little or no authority because he was in the bargaining unit.

Mr. Royster: Well, I say that he was not—I am asking this witness.

Mr. Edises: I submit, Mr. Examiner, that——

Trial Examiner Ruckel: Well, let's find out, if it is [657] important, if he is a foreman or if he isn't a foreman, irrespective of whether he is in the unit or not.

Mr. Hecht: It is stipulated he is a foreman.

Mr. Edises: He is a foreman in charge of a small department.

Trial Examiner Ruckel: Is it also stipulated, or is it a fact that he was in the union?

Mr. Edises: He was in the union, and, as the testimony of one of the Board's own witnesses indicated, he was one of the founders of the union at Peet's and very active as an officer and committeeman in the union until he was promoted not so very long ago.

Mr. Royster: That is correct.

Trial Examiner Ruckel: Now, as to whether he was in the unit or not, that doesn't have to be decided now, does it? I mean, is it important whether he was in the unit or not? If he was a supervisor, we have the essential facts to make a determination

(Testimony of Charles Wood.)

whether a statement that he makes amounts to interference, restraint, or coercion or not.

Mr. Royster: I would like to ask another question or two which I think will not be objectionable.

Q. (By Mr. Royster): You do have assistant foremen? A. We do.

Q. And you have a classification known as working foremen?

A. That is the mechanical gang only. [658]

Q. Has Mr. Grube a classification either of assistant foreman or working foreman?

A. Well, that has been a moot question, whether he was a working foreman or not.

Q. Well, how is he classified, or do you know?

Mr. Edises: Well, I suggest that—excuse the interrupation, counsel. I should address this to the Examiner.

Mr. Examiner, I suggest that the witness be permitted to continue with his answer explaining what he means by his status as working foremen being a moot question.

Mr. Royster: Well, now, Mr. Examiner, perhaps this will serve to straighten it out—I am not trying to confuse this witness.

Q. (By Mr. Royster): Are foremen at the plant classified definitely as foremen, working foremen or assistant foremen?

A. Well, I wouldn't say absolutely definitely. There is more or less of a loose classification.

Q. Is there a payroll classification of those three?

(Testimony of Charles Wood.)

A. They are on the monthly payroll.

Q. All on the monthly payroll?

A. Yes, the whole group.

Q. Now, Mr. Wood, you testified that when Mr. Gleichman showed you a list, which you first identified you estimated held from 60 to 75 names, that you saw the names of some key men on there, and that disturbed you? [659] A. Yes.

Q. And that you later by counting the number of lines on the sheet of *18* by 13½ paper, I believe you said it was estimated the number of people who came on there. Now, on further direct examination by Mr. Edises that number, you quickly agreed, might have been 44?

A. Now, I told you that I had to look at the thing very quickly. I am refusing to take the sheet, but at the same time I was trying surreptitiously to see how many were on it, and I am not sure. When a paper is turned like that, and turned quickly, if you look at it, maybe those names didn't go down as far as my recollection went.

Q. Well, you got a good enough glance at that paper to pick out the names of some key men, did you not?

A. I think so, yes. There was some of the men I didn't want to have go.

Q. And on the basis of that glance or look, or quick scrutiny, you made a calculation, and your calculation was from 60 to 75 names?

A. Yes.

Q. Mr. Wood, do you consider that the ILWU

(Testimony of Charles Wood.)

broke its no-strike pledge to the Colgate-Palmolive-Peet Company, or to the President, rather?

Mr. Edises: Now, just a moment.

A. That is a question of law, I think. [660]

Mr. Edises: Just a moment. I was napping at the time that was asked. Would you mind reading that back to me?

(The question referred to was read by the reporter.)

Mr. Edises: Now, I will object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Royster: Well, for the purpose of the record I will state that I think the question is proper for the reason that the ILWU is in here with its head hung low, it has been disgraced by a strike which was held at the Colgate-Palmolive-Peet Plant, and I believe that this witness would, if permitted to answer, testify that it did not consider the strike pledge had been broken because it was not a strike of ILWU.

Trial Examiner Ruckel: Well, the witness might not be the arbiter of whether the situation was sufficient to warrant the CIO's head being held low.

Mr. Edises: I don't feel, Mr. Examiner, that I should let that pass, because although it may seem like a subject for levity to Mr. Royster, I can assure the Examiner that the ILWU is prouder of nothing in the world than the fact that its members had a 100 per cent record of adherence to that no-strike pledge during the war, and that this is the

(Testimony of Charles Wood.)

only black mark on the escutcheon of the ILWU. And I assure you it is a matter of great seriousness to us, and we don't like it being treated with the kind of levity that has been displayed. [661]

Mr. Rowell: What about a man coming around and asking for the discharge of 60 to 70 people in a war plant?

Mr. Edises: I don't care to engage in colloquy with you, Mr. Rowell.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: Yes.

Q. (By Mr. Royster): Mr. Wood, you testified that for some considerable period prior to July 30 you had heard that the stewards at the plant had done certain things which had occasioned the displeasure of the ILWU. And you mentioned in that connection (if my memory serves me correctly), violation of the no-strike pledge.

Did you misspeak yourself there, or do you consider, or did you consider that the stewards had violated this no-strike pledge?

Mr. Edises: Now, just a moment. I am going to object to that question again on the ground that it is immaterial whether Mr. Wood considered that the stewards had violated the no-strike pledge, or whether he——

Trial Examiner Ruckel: I don't think it is material whether the company considered that the union had broken the pledge or not. It is a question of what the union considered.

(Testimony of Charles Wood.)

Mr. Edises: It is simply an indirect way of getting an answer to the same question that has just been objected to and [662] objection sustained.

Mr. Royster: No, it isn't, Mr. Edises. Mr. Wood testified, if my memory serves me, that he had heard some talk or rumors about the stewards violating the racial non-discrimination policy of the union, and in that connection that they had in some way violated the no-strike pledge.

Q. (By Mr. Royster): Now, is that correct, Mr. Wood? Was that your understanding?

Trial Examiner Ruckel: I think the witness testified that he read in the paper that these men had been accused of that, that is, by the union. The respondent was not accusing the men of breaking the no-strike pledge.

Mr. Royster: Well, that is not my recollection, Mr. Examiner. Of course, the record will show what was said.

I believe that is all.

Q. (By Mr. Rowell): Before these occurrences that began on July 28 and July 30, in connection with your job as labor relations supervisor, did you have occasion to learn among the employees any information as to either the union's charges against the employees or employees' charges against the union?

Mr. Edises: Objected to as too general and vague and speculative, impossible to determine what he is asking for from the question.

Trial Examiner Ruckel: Objection sustained.

(Testimony of Charles Wood.)

Q. (By Mr. Rowell): Well, now, your job, as you testify, was in connection with labor relations at the plant? A. Yes, sir.

Q. Did you have any occasion in connection with that job to find out how the labor relations were going?

Mr. Edises: Same objection.

A. I don't get that at all.

Trial Examiner Ruckel: Just a moment. Objection sustained.

Q. (By Mr. Rowell): Had there been an attempt during 1945, earlier in the year, to obtain a wage increase?

A. Well, I would have to ask you to qualify that more definitely. You mean a general increase or——

Q. (Interposing): I mean any increase?

A. There had been a request early in the year for an increase in wages for women and for second and third shift workers, and negotiations for that went over quite an extended period.

Q. Who made the request? A. The union.

Q. Was the wage increase granted?

A. Yes.

Q. In connection with those negotiations at that time did you have occasion to learn anything of the employees' attitude toward desiring wage increases?

Trial Examiner Ruckel: What is the purpose?

Mr. Rowell: I beg your pardon?

Trial Examiner Ruckel: I asked as to the materiality of the question.

Mr. Rowell: The materiality is just this: It

(Testimony of Charles Wood.)

seems to me that the evidence is clear in the case so far that the employees were dissatisfied with the union, as well as the union having been dissatisfied with the action of some of the employees.

Mr. Edises: Mr. Examiner, I will stipulate for counsel that the employees wanted wage increases, and that they wanted a number of other things, and that in all probability they wanted a number of things, including wage increases. I think that is a safe stipulation in almost any case involving labor relations.

Mr. Rowell: Well, I will accept the stipulation, but I would like to fill it out a little bit now by asking the witness some more questions.

Mr. Hecht: I think it is too remote, incompetent, irrelevant, and immaterial.

Trial Examiner Ruckel: What are you getting at? We are not going to try the merits——

Mr. Rowell: By no means. The crux of the case is that these employees became dissatisfied with the union and withdrew from it and joined another one.

Trial Examiner Ruckel: Well, apparently some of them did.

Mr. Rowell: That is quite true.

Trial Examiner Ruckel: I mean that is not in dispute, is it?

Mr. Rowell: By no means. I am going to find out what Mr. Wood knows about it.

Trial Examiner Ruckel: Well, ask him, I mean as to whether or not they were content with their

(Testimony of Charles Wood.)

wage status or something else now. If you want to explore his knowledge of this——

Mr. Rowell: Mr. Examiner, if you are going to restrict cross-examination so I have to just be satisfied with the answers that Mr. Wood gives his own counsel, I will just have to cease and desist.

Trial Examiner Ruckel: I am not going to restrict you, but go ahead, but don't ask him the merits of these wage controversies.

Mr. Rowell: Then I will stipulate that the purpose of the question is not on the basis of the merits of the wage controversy at all.

Trial Examiner Ruckel: If you ask the question, I will make the rulings. There is no question pending now.

Q. (By Mr. Rowell): Did you have an occasion to learn earlier in 1945, Mr. Wood, that the employees were making certain [666] demands that the union was not satisfying, in other words, demands of the company for wage increases, or on any other matter?

Mr. Edises: I will object to that on the ground that it would be comprehensible on its face. The union is not the one who is responsible for the wage increases, the company is the one who is responsible there, and during the war the government.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Is it your practice to walk around through the plant?

A. Generally once a day I try to make the rounds.

(Testimony of Charles Wood.)

Q. In the course of that do you talk with employees in the plant? A. Occasionally.

Q. Do you talk with them about labor relations matters? A. Sometimes with the stewards.

Q. Did you talk with any of these five stewards in the early part of 1945 concerning labor relations matters?

A. Indeed I did. There was something going on all the time.

Q. Can you tell me what you mean by "something going on all the time?"

A. Well, they were always making requests for something, to have a girl transferred here, or a girl transferred there, [667] or this one was doing too much work, or——

Q. (Interposing): These five stewards were actively pursuing their jobs as stewards, so far as you know? A. I wouldn't put it that way.

Q. Well, what way would you put it?

A. Well, I thought they were trying to harass the company.

Q. Did they at any time during those discussions with you indicate dissatisfaction with the ILWU union? Was there any discussion of that kind?

A. Well, I won't say that they manifested dissatisfaction with the union, but they did make criticisms of the union officers.

Q. On how many occasions can you remember criticisms having been made of union officers?

A. That would be pretty hard to say; on numer-

(Testimony of Charles Wood.)

ous occasions, and several times in connection with certain matters.

Q. Yes. This was during the first half of 1945. I mean it was before these——

A. Well, I wouldn't say definitely whether it was just confined to the first half; for quite a number of months, I would say.

Q. Before July 30, let us say? A. Yes.

Q. Were such criticisms made during 1944?

A. To the best of my recollection I would say "Yes." [668]

Q. Did you have occasion to talk with employees other than the five shop stewards with regard to that matter?

A. About union matters, you mean?

Q. Yes.

A. You mean about union matters?

Q. Yes. A. No.

Q. Was it and is it your practice to observe the bulletin boards in the plant?

A. More or less, yes, incidentally, walking through.

Q. Did you also observe whatever union literature might have been being distributed about the plant? A. I was handed some.

Q. Were you handed any AF of L literature?

A. Yes.

Mr. Edises: Well, I submit that we ought to have the time fixed for a question of that sort.

Mr. Hecht: I assume he means the time of the campaign.

(Testimony of Charles Wood.)

Mr. Edises: I, frankly, can't see the relevance of all this line of testimony, but I have not objected heretofore because I was trusting that Mr. Rowell would not prolong it.

Mr. Rowell: It won't be long prolonged.

Q. (By Mr. Rowell): Can you fix the approximate time when you received any AF of L literature?

Trial Examiner Ruckel: The period? [669]

A. Well, it was during the time that these various bulletins were being distributed.

Trial Examiner Ruckel: That doesn't very accurately answer the question, does it? During what period?

Mr. Rowell: Suppose we place the time by reference to respondent's Exhibits 1 through 14?

Mr. Hecht: It is August 7 to October 15, Mr. Rowell.

Mr. Rowell: August 7 to October 15. That is the date of these various——

The Witness: What dates?

Mr. Hecht: August 17 to October 15.

The Witness: Yes, I would say that I undoubtedly was handed them at that time.

Q. (By Mr. Rowell): Do you know whether or not any of the persons that you have seen passing the AF of L buttons around in the plant——

Mr. Hecht: Now, just a moment. Mr. Wood did not say he saw anyone passing AF of L buttons around the plant.

Mr. Rowell: Well, I think he did.

(Testimony of Charles Wood.)

The Witness: I did not. I never said anything of the kind.

Mr. Rowell: Or wearing AF of L buttons.

Mr. Hecht: You saw them wearing AF of L buttons?

The Witness: I saw them wearing them.

Mr. Rowell: Well, that surprises me. [670]

Q. (By Mr. Rowell): I will ask you: You testified that there were some people in the plant still working there that you saw wearing AF of L buttons? A. Yes, sir.

Q. Do you know whether or not their names were on Mr. Gleichman's list before you had it cut down?

A. No, I do not.

Mr. Edises: Just a moment. I object to that. There is no testimony in the record that this witness had that list cut down.

Trial Examiner Ruckel: Objection sustained. The answer may be stricken.

Q. (By Mr. Rowell): By the way, when you were talking to Mr. Gleichman about the extensiveness of that first list that he was attempting to give you, you protested about the effect it would have on the company if you granted his request, did you?

A. I told him it was going too far, yes.

Q. That it would have an effect on the production?

A. I don't think I went that far. I didn't spend any more time with him than I could help. I wanted to get rid of it, and get at some of the officers of the union.

(Testimony of Charles Wood.)

Q. Did you tell him the company was engaged in war business and discharging so many people would hurt it? A. To whom? [671]

Q. Mr. Gleichman? A. No.

Q. To anyone else in the ILWU?

A. Yes.

Q. Who? A. Mr. Heide.

Q. What was his answer to that?

A. Well, I don't recall.

Mr. Rowell: I have nothing further.

Redirect Examination

By Mr. Edises:

Q. Mr. Wood, your company has received copies of these decisions of the trial committee testimony?

A. Yes, sir.

Q. I think you testified approximately the first part of November and the first part of January?

A. That is my best recollection.

Q. Is that right? A. Yes.

Q. This is the copy the company received, is it?

A. (Examining document.)

Q. And this is the other?

A. Well, it was those, or some like that.

Mr. Edises: All right. May I have these marked for identification, please?

The decision of Trial Committee dated October 10, 1945, [672] will you please mark that as Intervener's No. 6, and the decision of the Trial Com-

(Testimony of Charles Wood.)

mittee dated December 24, 1945, will you please mark that as Intervener's No. 7.

(Thereupon the documents above referred to were marked Intervener's Exhibits Nos. 6 and 7 for identification.)

Q. (By Mr. Edises): Now, the decision of October 10 refers to, among other things, to testimony showing that Haynes, Luchsinger, Marshall, Moreau and Smith had "been working against the established policies of the union for a long time. For example, the union's policies against discrimination on account of race or color."

Did you testify that you had some knowledge of such a beef? A. Yes.

Q. Prior to the time that you received this?

A. Yes, I did.

Q. This exhibit?

A. Yes, I have heard it.

Q. It further states: "Back in the early part of 1944 Marshall refused to take up the beef of a Negro member at Peet's named Harrison because he 'didn't like him,' the other stewards backed him up on this and all of them were taken before the grievance committee and found guilty of conduct unbecoming stewards and given a reprimand for their [673] treatment of this Negro brother."

Mr. Rowell: That is objected to, Mr. Examiner.

Trial Examiner Ruckel: Let counsel finish his question.

Q. (By Mr. Edises): My question is whether

(Testimony of Charles Wood.)

he had heard of that incident prior to the time when he saw this document?

Mr. Rowell: Don't answer, Mr. Wood. I want to make an objection, that the questions that I put were for the purpose of finding out whether there was any dissatisfaction of the stewards with the union, and the union with the stewards, and had nothing to do with——

Trial Examiner Ruckel: You put the question and he answered it.

Mr. Rowell: ——had nothing to do with this attempt to discipline stewards.

Trial Examiner Ruckel: No, this is something quite different. Are you objecting to it on the grounds of materiality?

Mr. Rowell: I object to it as immaterial, yes.

Trial Examiner Ruckel: Objection overruled.

Mr. Edises: All right.

Q. (By Mr. Edises): The question is: Did you have any knowledge of this incident before you saw this document? A. Oh, indeed, I did.

Q. The document goes on: "Then there was the Ulysses Norman case, where a union member at Peet's said out loud in [674] the dressing room that there are too many Negroes in the union, the quicker we get them out the better (only he didn't say 'Negro.') Brother Norman, who is a Negro, filed charges against the brother who made this statement. Defendants Marshall and Sherman publicly defended the right of this member to make such attacks on Negro fellow members."

(Testimony of Charles Wood.)

Did you hear anything about that beef?

A. I heard about it.

Q. Prior to the time that you received this document?

A. Oh, way back sometime ago.

Q. At about the time it occurred, is that right?

A. Well, I wouldn't say that. I don't know when it occurred, but it was several months ago that I first heard it.

Q. Several months ago? A. Yes.

Q. Prior to your receiving this? A. Yes.

Mr. Rowell: Then I move to strike. The only materiality would be whether he heard of it before when the occurrence was allegedly occurring, before the action of the company.

Q. (By Mr. Edises): You knew about this before the stewards were dismissed, isn't that correct?

A. Yes.

Q. It further goes on to state: "There was a lot of evidence showing that all of the stewards fell way down on [675] the job when it came to carrying out the duties of their office. For instance, they refused to put Section 10 of the Peet's contract into effect, which called for setting up stewards for each department. They refused to select a chief steward as required by the contract."

Did you know anything about such a beef?

A. I knew that they refused to appoint a chief steward.

Q. Did you know that this was a subject of controversy within the union? A. Yes, I did.

(Testimony of Charles Wood.)

Q. It further states "They showed poor judgment in regard to what grievances to present to the management. They pushed many phony grievances."

Do you know that they had been charged with that by the union?

A. I did not know they had been charged with it, no.

Q. It states also: "They failed to attend meetings of the executive council, which was their duty as stewards, and also membership meetings."

Did you have any knowledge of that?

A. I had heard of that one.

Q. You had heard that had been the subject of controversy within the organization?

A. Well, I had heard they had been charged with it. I wouldn't say about "controversy." [676]

Q. This was prior to the time they were dismissed? A. Yes.

Q. Then it states further: "The union's political action program took a bad beating from the stewards. For instance, they refused to carry out the mandate of the union membership in regard to financial support for the National Citizens Political Action Committee. They sabotaged collection of funds for the defense of Harry Bridges of the ILWU. They opposed the program for wiping out the Little Steel formula. They bucked the union's program in regard to enforcing OPA regulations."

Now, had you heard of any such matters?

A. I had heard of some of them; some of them I hadn't.

(Testimony of Charles Wood.)

Q. You had heard that was a subject of controversy?

A. Some of them; not all of it I hadn't heard.

Trial Examiner Ruckel: Some of it?

The Witness: Yes.

Q. (By Mr. Edises): And it further states: "Toward the end of May, 1945, they even refused to call a meeting of the employees at Peet's to discuss current contract negotiations, air the grievances of the rank and file and elect stewards for the coming year. Brother Lou Gonick, business agent, demanded three separate times that they arragge to call such a meeting, but the stewards kept putting him off with phony excuses, and after they finally agreed to call a meeting they broke their promise, claimed they forgot all about calling the meeting."

Did you hear anything about that?

A. Give me that date again.

Mr. Royster: I will object now. I guess I must have been asleep for 30 minutes. This is direct examination, and if ever a witness was being led by the nose, why, this one is.

Mr. Edises: Mr. Examiner, I am simply asking him whether he had heard of these incidents referred to in the union's decision prior to the time that these persons were discharged. Now, I submit that it is not only relevant to the issues of this case——

Trial Examiner Ruckel: I don't see that it is leading. You may answer.

(Testimony of Charles Wood.)

Mr. Edises: How else can I ask if he knew about it.

Q. (By Mr. Edises): Now, that was, according to this, toward the end of May, 1945?

A. Would it be allowable for me to look at that? You have asked so many things there that I can't carry them all in my mind.

Q. Yes. This part here (indicating).

A. (Examining document) Yes.

Q. Now, the question is: Had you heard about the grievance, about the refusal of the stewards to call a meeting toward [678] the end of May, 1945?

A. I wouldn't place the date, but I had heard that there had been quite a little controversy about having a meeting.

Q. Well, it was your knowledge about the time that this event happened, whatever date it may have been? A. Yes; I would say so.

Q. And this decision further states: "In regard to the second set of charges, against Lonnberg, Olsen, Thompson and Sherman, the evidence showed that these four men were responsible for pulling the only wartime strike that members of this local ever were guilty of."

Had you heard that these men had been charged with responsibility for pulling that strike?

A. Yes, yes.

Q. It further states: "On top of this, the evidence shows that three of these men, Sherman, Thompson and Lonnberg, made libelous and defamatory charges against Paul Haide and other

(Testimony of Charles Wood.)

officials of the union, such as being racketeers, looting the union's treasury, and so forth."

Had you heard that such charges had been made against officers of the union?

A. Will you mention the names again that those charges specify?

Q. Against Paul Heide.

A. No. The men that the charges were made against. [679]

Q. "On top of this, the evidence shows that three of these men, Sherman, Thompson and Lonnberg, made libelous and defamatory charges against Paul Heide and other officials of the union, such as being racketeers, looting the union's treasury, and so forth?"

A. Not about those three, I had not heard it.

Q. You had not heard that about these three men? A. No, I did not, no.

Q. Had you heard that others of the persons involved in this case were accused of making such charges? A. Yes, I had heard that.

Mr. Edises: I think that is all. I think he testified that he knew about the charges in regard to the wartime strike, which was the charge——

Trial Examiner Ruckel: (Interposing) Are we on the record now, or off?

Mr. Edises: I really shouldn't be.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: Mr. Examiner, I will offer in evi-

(Testimony of Charles Wood.)

dence as Intervener's 6 the decision of trial committee of the union, and as Intervener's No. 7—No. 6 is the decision dated October 10, 1945, and No. 7 the decision of the trial committee dated December 24, 1945. [680]

I will stipulate that I do not make the offers for the purpose of establishing thereby the truth of the matters contained in the decisions, but simply as the decisions rendered by the trial committee of the union in the cases involving the individuals named therein.

Mr. Royster: I would like to take a look at those.

(Examining documents) On No. 7, is it true, Mr. Edises, that all of these individuals were found —all but two were found guilty of violating the no-strike pledge, and that two were found guilty of permitting and encouraging an unauthorized strike in wartime?

Mr. Edises: That is my recollection, but the decision, of course, would show that itself.

Mr. Royster: Yes. And this exhibit is offered, if I understand it correctly, solely for the purpose of showing that such a finding was made?

Mr. Edises: Yes, a finding was made.

Mr. Royster: I have no objection to 7.

Trial Examiner Ruckel: Does anybody else have an objection to 7?

Trial Examiner Ruckel: Does anybody else have an objection to Intervener's 7?

(Testimony of Charles Wood.)

Mr. Hecht: I have no objection.

Trial Examiner Ruckel: It will be received.

(The document heretofore marked [681] as Intervener's Exhibit No. 7 for identification was received in evidence.)

Mr. Edises: I am sorry. Have both the exhibits been received?

Trial Examiner Ruckel: 7 has.

Mr. Royster: I have no objection to Intervener's 6 either. I assume that it is also offered only for the purpose of showing that the individuals named here were found guilty of certain charges?

Mr. Edises: That is right.

Trial Examiner Ruckel: Any other objection?

Mr. Hecht: I have none.

Mr. Rowell: No objection.

Trial Examiner Ruckel: It will be received.

(The document heretofore marked Intervener's Exhibit No. 6 for identification was received in evidence.)

Trial Examiner Ruckel: Any further questions of this witness?

Mr. Edises: No further questions.

Recross Examination

By Mr. Royster:

Q. When was it, Mr. Wood, that you learned that the four committeemen, as we have referred to

(Testimony of Charles Wood.)

them here, were charged with fomenting and encouraging a wartime strike?

A. Well, I never had, if I recall, precise—I don't have [682] precise knowledge of the time I heard it. Lots of this stuff came to me as the thing progressed, after the 1st of August.

Q. Well, it would be true, would it not, to say that you heard of no charges until after these men had been discharged? A. Now, let me think.

Mr. Edises: I would like to here, for a moment,——

Mr. Royster: I would like to have the witness answer it.

Mr. Edises: Well, I would like to object then on the ground that the question is not made clear, whether he is referring to the filing of a formal charge under the union's trial machinery, or whether he is simply referring to a general accusation that these guys were responsible for pulling that phony strike.

Mr. Royster: Well, I am talking to the witness in the same terms that you talked to him. You read certain allegations that had been made concerning these committeemen to the witness, and you asked him if he had ever had knowledge that such charges were a matter of controversy within the union, and he answered "Yes". Now, I am trying to show, or trying to discover when he learned of this controversy or discussion.

Trial Examiner Ruckel: Well, it is very appar-

(Testimony of Charles Wood.)

ent that this trial did not take place until long after they were suspended. [683]

Mr. Royster: Yes, Mr. Examiner, but the trial relates matters which happened long before the strike took place, and the witness said "Yes", he knew that these matters were a subject of controversy.

The Witness: I said I heard it.

Q. (By Mr. Royster): Yes, you heard it.

A. I didn't say I knew it.

Q. But you heard there was certain controversy within the union? A. Yes.

Q. And that it concerned the matters about which Mr. Edises read to you?

A. Yes, but I was not a member of the union. I didn't know——

Mr. Hecht: Mr. Wood, I think that Mr. Royster has in mind whether you heard that these men were accused of pulling the strike after it occurred, or after the strike occurred.

Mr. Rowell: When?

Mr. Edises: No, I don't think——

Mr. Rowell: That doesn't make sense.

Trial Examiner Ruckel: I don't think that is the question.

Mr. Royster: Well, I will ask this question:

Q. (By Mr. Royster): Did the fact that you at some time heard that these four committeemen had been charged with [684] responsibility for fomenting or leading a wartime strike have any-

(Testimony of Charles Wood.)

thing to do with your accession to the union's demand that they be suspended?

Mr. Hecht: I object.

A. Name the four men.

Mr. Edises: Just a minute. I object.

Mr. Hecht: I object to tse question. It has nothing to do with this case, and whether he acceded to it because they had been charged with a strike, or whether he acceded to it because a letter was presented to him, there is no point in asking him that question.

Mr. Edises: I would like to add on the ground of complicity with what counsel says the evidence shows very clearly and it has not been contradicted, that the basis for the company's acquiescence in the union's demand was their belief, good faith belief, that the contract required them to do so and, that, as a matter of fact, they acted contrary to their own desires in doing so.

Mr. Rowell: Well, now, counsel has so well educated the witness I suggest you withdraw the question, Mr. Royster.

Mr. Royster: Well, of course, the record and the evidence is not as clear as Mr. Edises would have us believe, and the fact is that there has been some effort here by way of testimony to establish that the witness and other responsible officers of the company could well believe that the ILWU's request that these men be suspended was based upon certain [685] actions that the individuals had taken, which was distasteful to the ILWU, and had no

(Testimony of Charles Wood.)

bearing upon this A F of L controversy in the plant.

Mr. Hecht: May I make a statement at this point, Mr. Royster? I believe the question of law involved here is the knowledge of the company with reference to the reasons why these men were put in bad standing. Your question was the reason why the company acceded, and I think the record is clear as to why the company acceded, because it was told that the men were not in good standing. So, perhaps if you would reframe your question I would have no objection.

Mr. Royster: Well, of course, that is your conclusion, Mr. Hecht.

Mr. Hecht: Well, that is the basis of my objection.

Mr. Royster: I will withdraw the question and I have no further questions of this witness.

Q. (By Mr. Rowell): Could I ask who you heard these various matters from, Mr. Wood?

A. Well, I would have to ask you to be more specific? What various matters?

Q. For example, from whom did you hear that these stewards had been spreading false and misleading information among the membership concerning the policy and program of the union, the activities and position of union officers, the status of the union treasury, and the status [686] of the contract between the union and Colgate-Palmolive-Peet Company?

Mr. Edises: Objected to on the ground that the

(Testimony of Charles Wood.)

did not testify having such knowledge. That question was not asked of him.

Q. (By Mr. Rowell): From whom did you hear that Sherman—I withdraw that.

From whom did you hear that two of the shop stewards had been charged with making statements against Paul Heide and other officials of the union, such as that they were looting the union's treasury and so forth?

A. Can you name the stewards?

Q. Well, it says here, "Sherman, Thompson and Lonnberg," but I think you testified it was Marshall and——

Mr. Hecht: No. He didn't testify it was Marshall.

A. I didn't testify.

Q. (By Mr. Rowell): Did you testify you had heard some charges made against stewards of that kind?

Trial Examiner Ruckel: He particularly specified he didn't hear it as to these.

Q. (By Mr. Rowell): Did you testify that you had heard these shop stewards had been charged with refusing to call a meeting of the employees?

A. Yes, I had heard they refused to call a meeting.

Q. Who did you hear that from? [687]

A. I can't recall. It was common talk around the plant, there was quite a bit of talk about it, that they hadn't had a house meeting for a long time.

Q. Was there talk pro and con about that?

(Testimony of Charles Wood.)

Mr. Edises: Well, now, I will object to that. It is going outside the scope of proper cross examination. What possible difference could it make?

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: Well, now, Mr. Examiner, if evidence is brought in here that there was dissatisfaction on the part of the union with the conduct of these employees I am certainly entitled to bring out that the company had knowledge that the employees were dissatisfied with the union.

Trial Examiner Ruckel: Yes, but the employees are not charged with discharging the union. The union is, or the respondent is accused of discharging the employees at the invitation of the union.

Mr. Rowell: Certainly.

Trial Examiner Ruckel: So the question is, what did the respondent hear that might be the union's reasons for asking the discharge of these men. It is not relevant to what might have been on the other side.

Mr. Rowell: It certainly is. If the Respondent knew that the employees were dissatisfied with this union and were trying to get out of it, then they are certainly put on [688] notice as to—at least, it certainly is evidence that they knew why the union was taking that action.

Trial Examiner Ruckel: Well, Respondent has already testified that it is perfectly clear that their employees were trying to get out of the union. That is not controverted.

(Testimony of Charles Wood.)

Mr. Rowell: And that the company knew about it. All right, I withdraw it.

Mr. Edises: Those were your words, Mr. Rowell.

Mr. Rowell: The Examiner wouldn't let me add to the proof on the score.

Trial Examiner Ruckel: Any further questions of this witness?

Mr. Royster: Nothing further from the Board.

Mr. Hecht: Nothing further.

Mr. Edises: No further questions.

Mr. Hecht: And the respondent rests, Mr. Examiner.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Does the Board or the intervening union have any witnesses?

Mr. Edises: Could we go off the record for a minute?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record. [689]

Mr. Edises: Will you please mark this as Intervener's Exhibit 8 and Intervener's 9?

(Thereupon the documents above referred to were marked Intervener's Exhibits 8 and 9 for identification.)

Mr. Edises: Will it be stipulated that the two transcripts of testimony which I hold in my hand, and which are marked for identification as Inter-

vener's Exhibit 8 and Intervener's Exhibit 9, being the transcripts of the testimony taken at the trials of various of the complainants on which the decisions heretofore introduced in evidence as Intervener's 6 and 7 were based, may be received in evidence for the sole purpose of indicating the proceedings on which those decisions were based and not as evidence of the truth of any of the matters contained in those transcripts?

Mr. Royster: So stipulated.

Mr. Rowell: So stipulated.

Mr. Hecht: No objection.

Trial Examiner Ruckel: They may be received.

(The documents heretofore marked Intervener's Exhibits Nos. 8 and 9 for identification were received in evidence.)

Mr. Edises: Mr. Examiner, could I ask that we have a few minutes' recess for the purpose of checking my notes to determine whether I have anything further?

Trial Examiner Ruckel: We will recess for five minutes. [690]

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Has the Intervener finished?

Mr. Edises: Yes, the Intervener will not produce any further evidence.

I would like to ask the Examiner whether, in his opinion, the filing of a written motion to intervene is required, because on account of the pressure of

other business I was unable today to go down to my office and pick up the written motion which I had dictated over the telephone. If, in the opinion of the Trial Examiner, it is not mandatory, I would prefer to rest on our oral intervention.

Trial Examiner Ruckel: It is not mandatory. I will waive the requirement of a written petition and grant your oral petition as of yesterday, or as of the first day of the hearing, to intervene.

Mr. Edises: Thank you.

Trial Examiner Ruckel: Are there any motions by any of the parties?

Mr. Royster: I move, Mr. Examiner, to conform the pleadings to the proof in matters such as the dates, spelling of names, and other matters not of substance.

Trial Examiner Ruckel: If there is no objection, the motion will be allowed.

Mr. Hecht: No objection whatsoever, Mr. Examiner. [691]

Mr. Royster: I have no further motions.

Mr. Hecht: At this time, Mr. Examiner, I would like to move to dismiss the charge contained in Paragraph V of the complaint, Subdivision 3, to-wit: "Refusing union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant——."

Trial Examiner Ruckel: I don't think the reporter can hear you.

Could it be comprised by saying that you renew all the motions made this morning which were not granted by the Trial Examiner?

Mr. Hecht: Yes, Mr. Examiner.

Trial Examiner Ruckel: Ruling on those motions is reserved.

Mr. Edises: For the ILWU I would likewise renew the motion to dismiss on the ground that the actions taken in regard to the complainants was pursuant to a valid closed shop agreement, and, further, that in any event the complainants should be denied any relief under the Act because of their participation in an illegal wartime strike.

Trial Examiner Ruckel: Ruling is also reserved on that motion.

Mr. Hecht: Mr. Examiner, at this time on behalf of the respondent I would like to have all charges brought on behalf [692] of Edward Navarro dismissed.

The Examiner will recall that Mr. Navarro was a member of the CIO No. 1304, Machinists, and actually never maintained, or never had an ILWU status at the plant.

Trial Examiner Ruckel: Wasn't there some further—what do you claim for Navarro?

Mr. Royster: Well, Mr. Examiner, I claim that it was not the practice at the Colgate-Palmolive-Peet Plant to enforce the closed shop contract as far as members of the Eastbay Union of Machinists, Local 1304, is concerned, that others at the plant had membership only in the Machinists Union and were not disturbed in their employment, and it was not until Mr. Navarro wore an A F of L button and otherwise indicated his friendliness toward the A F of L, that he was discharged.

Mr. Edises: Mr. Examiner, may I be heard a moment on that? I have no recollection that the testimony shows any of the matters referred to by Mr. Royster. I am quite certain that those matters were not gone into at all in the record. The fact is I am informed by Mr. Gleichman that the only exceptions made in the case of 1304 people were those who worked as machinists. And I will further remind the Examiner of the testimony that Mr. Luchsinger, one of the complainants here, asked this man to join the ILWU.

Trial Examiner Ruckel: That is my recollection, but I [693] am not going to grant the motion now. The record will bear reading. Ruling is reserved.

Mr. Hecht: Mr. Examiner, at this point I also would like to move to dismiss all charges brought on behalf of the following named complainants: Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Catano Periera, Rose Ros and John Puruca.

The basis of the motion, Mr. Examiner, is the basis of my motion directed to Albert Zulaica, for the reason that these persons who are now complainants here pleaded guilty to charges brought against them by the ILWU, and it is hardly fitting that persons who have admitted that they were put in bad standing for reasons other than membership of the A F of L should be in this Board, before this

Board claiming relief on the basis that they were discharged for A F of L activity.

Trial Examiner Ruckel: Ruling on the motion is reserved.

Mr. Royster: I would just like to remark that, of course, the individuals named did not in any way admit that the reason for their suspension from membership was their participation in this strike.

Mr. Hecht: I think that the record and the findings would bear the contrary out, Mr. Royster, and I am not saying [694] they were guilty of the charge, but I am saying that they did admit the charge.

Trial Examiner Ruckel: Any further motions?

Mr. Hecht: I will move, without stating the grounds (I think I have already expressed them to the Examiner) to dismiss the whole proceeding on the basis that this is an attack on the validity of a contract that has not otherwise been in any way impeached as fraudulent, invalid, or an imposition on the desires of the complainants before this Examiner.

Trial Examiner Ruckel: Ruling is reserved.

Mr. Hecht: No further motions.

BOARD'S EXHIBIT N. 3

[Warehouse Union Local 6 Letterhead]

July 30, 1945.

Colgate, Palmolive, Peet Company,
6th & Carlton Streets,
Berkeley, California.

Att: Mr. C. A. Altman

Dear Mr. Altman:—

This is to notify you that charges have been preferred by this Union against the following employees of your Company, and that they have been suspended from membership of this organization pending a trial as provided for in the Constitution of our local Union:

Clyde W. Haynes, R.F.D. #2, Box 884, Walnut Creek, Calif.

Dave Luchsinger, 434 - 65th Street, Oakland.

Frank Marshall, Rt. 1. Box 241, Walnut Creek, Calif.

Sanford Moreau, 1004 Jones Street, Berkeley, Calif.

Harry A. Smith, Box 243, Rt. 6, Walnut Creek, Calif.

We therefore, respectfully request that the above-named employees of your Company be immediately removed from the job until such time as the charges against them have been determined by this organization.

Trusting that we may have your cooperation in this matter, we remain

Very truly yours,

/s/ PAUL HEIDE,
Vice-President

PH:ES
owu-cio

BOARD'S EXHIBIT No. 4

This phamphlet was distributed on Co. property before discharge of first 5 employees (Steward) distributed July 30, 1945.

Attention!
All Warehouse Union Members:

An illegal meeting has been called by certain employees of Peet's, now under suspension as members of this union for violation of the membership oath, and other illegal acts.

Warning!

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

GENERAL EXECUTIVE BOARD
Warehouse Union Local #6, ILWU

owu/cio

BOARD'S EXHIBIT No. 5

[Standard Form No. 14 Telegram]

July 30, 1945.

Int. Warehouse Union 6

You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your union and being more than 50% of such employees by action taken for such purpose have and do hereby withdraw from your union, sever connections and refuse to be further bound by any of the laws rules or regulations of the constitution of I.L.W.U.

EMPLOYEES WELFARE ASSOCIATION
By Negotiating Committee
E. H. Thompson
W. Sherman

BOARD'S EXHIBIT No. 6

[Western Union Telegraph Form)

WUAH 17 61 Berkeley Calif July 30 1048A

Bert Railey, Mgr
Colgate Palmolive Peet Co.
800 Carleton St WUX Berkeley Calif.

You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co all being former members of RLWU 1-6 and being more than 50 percent of total employees have with-

drawn and severed relations with ILWT-6 as collective bargaining agent.

EMPLOYEES WELFARE ASSOCIATION
By Negotiating Committee 921A
E H Thompson William Sherman
H Lumnberg L Olson

BOARD'S EXHIBIT No. 7

Colgate-Palmolive-Peet Co.
Agreement

This Agreement, made and entered into this 9th day of July 1941, by and between Colgate-Palmolive-Peet Company, Berkeley, Plant hereinafter referred to as the Employer, and Warehouse Union Local 1-6, I.L.W.U., hereinafter referred to as the Union.

Witnesseth

* * * * * * *

Section 2. Recognition. The Union is hereby recognized as the sole collective bargaining representative for all employees covered by this agreement.

Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the union is unable to furnish competent workers, the Employer may hire from

outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed. In the hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.

* * * * * * *

Section 18. Future Changes. The above constitutes an agreement between the Company and its employees, represented by the International Longshoremen's and Warehousemen's Union, Local 1-6, and shall remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives.

Thirty (30) days notice will be required before the adoption of any change suggested by either the employees or the Company and no change of any sort will be made without collective agreement to it having been arrived at between the Company and the representatives of the employees. If and when such changes are found necessary they will be made with due regard for the mutual rights, privileges and well being of the employees and the Company.

Memorandum of Agreement

It is hereby agreed that certain contract dated July 9, 1941, by and between Warehouse Union,

Local 6, I.L.W.U., and Colgate, Palmolive Peet Company, shall remain in full force and effect, pending the disposition of those provisions which apply to the following:

Shift differentials
Wage rates for women workers
Sick leave

and upon which agreement has been reached by the parties hereto, subject to approval of the Tenth Regional War Labor Board.

BOARD'S EXHIBIT No. 8

Attention All Members I.L.W.U. #6 Employed at Colgate, Palmolive, Peet Company! Look Before You Leap!

Because of a constant campaign of misinformation and falsehoods carried on by Sherman-Marshall-Lundeburg & Co., many otherwise reliable members of our union are being misled down a blind alley, and into action that can only result in losses and hardship for the membership involved. The unscrupulous people who are attempting to promote strike action at this plant are traitors to our union membership, our flag and our country! All members who join with them are jeopardizing their own reputation, their union standing, their seniority and their jobs! Any strike at this plant will bring an immediate directive from the Regional War Labor

Board to return to work—and will resolve no issues —fancied or otherwise!

So that all members may understand the true situation, the following is a copy of agreement extending the provisions of the union contract, including the requirement that only members of Warehouse Union, Local #6, I.L.W.U., in good standing may be employed by the company. It will be enforced by the entire membership of our union, if it becomes necessary.

Memorandum of Agreement

(Copy)

It is hereby agreed that certain contract dated July 9, 1941, by and between Warehouse Union, Local 6, I.L.W.U., and Colgate, Palmolive, Peet Company, shall remain in full force and effect, pending the disposition of those provisions which apply to the following:

Shift differentials
Wage rates for women workers
Sick Leave

and upon which agreement has been reached by the parties hereto, subject to approval of the 10th Regional War Labor Board.

In Witness Whereof, we set our hands and seals this 24th day of July, 1945.

COLGATE, PALMOLIVE, PEET COMPANY
By /s/ C. A. ALTMAN
WAREHOUSE UNION, LOCAL 6, ILWU
By /s/ LOUIS GONICK

owu-cio

BOARD'S EXHIBIT No. 9

(Copy)

Warehouse Union, Local 6, C.I.O.
158 Grand Avenue Oakland 12, Calif. Higate 5045

July 31, 1945

Mr. Lincoln Olsen
623 Kearney St.,
El Cerrito, Calif.

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of Membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights and privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, ILWU.

/s/ PAUL HEIDE,
Vice-President for the General Executive Board

PH:ES
owu-cio

Registered—Return Receipt Requested
Received Aug. 31, 1945.

BOARD'S EXHIBIT No. 10

[Warehouse Union, Local 6 Letterhead]

September 1, 1945.

Colgate-Palmolive-Peet Company,
6th & Carlton Streets,
Berkeley, California.

Att: Mr. C. A. Altman

Dear Mr. Altman:—

This is to notify you that the employees named below have been suspended from membership in this Union and are no longer members in good standing.

Pending the determination of Charges which have been filed against these persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your employ until such time as you receive word from us in regard to their status as members in this Union.

Rose Ross	Martin Heppler
Esther Young	Bill Howard
Ina M. Paige	Glex Hixon
Ophelia Reyes	Alden Lee
Kay Norris	Al Barboni
Ann Cerrato	Felix Denkowski
Henry Giannarelli	A. L. Richards
Manuel Souza	Terry Anderson
Albert Zulaica	K. Periera

Mike Ramirez

Your immediate attention to this request will be appreciated.

Yours very truly,

/s/ PAUL HEIDE,
Vice-President.

PH:ES
owu-cio

Received Sept. 11, 1945.

BOARD'S EXHIBIT No. 11

[Warehouse Union, Local 6 Letterhead]

July 30, 1945.

Mr. William Sherman,
1515 Kains Avenue,
Berkeley, California.

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a

member of this Local as of this date, losing all rights and privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, I.L.W.U.

/s/ PAUL HEIDE,
Vice-President for the General Executive Board

PH:ES
owu-cio

Registered—Return Receipt Requested

BOARD'S EXHIBIT No. 12

August 22, 1945.

Dear Member:

Further investigation of the disruptive activities of former Shop Stewards and others, brings to light the following facts:

1. Some people enjoyed benefits of the closed shop Agreement at Peets, who were not members of your Union. Although the majority were paying their initiation, dues, and going to the meetings, there were a chosen few who were riding free. Why?

2. Many "favorites" were being "excused" from meetings, saving a $1.00 fine, and undermining interest in Union affairs. Why?

3. Management was not reporting all new people hired, so that between the Stewards and the Company, your Union was steadily undermined

for six months. Those who did the dirty work were the ones pointing fingers at the elected Union officials and committing slander, while at the same time making big promises about the A.F.L. Why?

4. We found that these "misleaders" advised:
   a) That the CIO Warehouse Union, Local 6, had no Agreement with Peets.
   b) Not to join the CIO Warehouse Union.
   c) Not to pay dues.
   d) Not to show your Union book to any CIO Steward or official.
   e) That you didn't have to bother with rules and by-laws passed by majority of the 18,000 members of Local 6.
   f) That you didn't have to listen or follow the instructions of Bopp, Squires, Leacock and DaCruz, the Stewards who were elected unanimously at the last Peet's house meeting held Friday, August 10th, 8:00 P.M.

You Have Been Fed Poison and Now You Are Being Wrongly Advised. Why?

5. Warehouse Union, Local 6, has an agreement with Peet's. A large company such as Peet's would not do business with a Union if it didn't have a written contract. Chemical Workers' Union #233 would be hard pressed to prove there wasn't a contract. They know a "good standing clause" is why the Company had to lay off the nine men when Local 6 demanded it.

6. Only members of the Warehouse Union, Local 6, work at Colgate Palmolive Peet Company. If anyone says different—let him test it.

7. Any Peet's employee reported as trying to get people to bolt the CIO and join the AFL or wearing an AFL button, will be taken off the job.

8. Local 6 is defending your best interest when it acts against disruptive members, just as in the Armed Forces we are always better off when spies and fifth columnists are kicked out, rather than appeased.

9. The coming trials will determine the honesty and justness of the charges.

10. As a result of the investigation last week, we have found it necessary to consider the removal of several more of the ringleaders who have violated all of our rules.

11. In a few days there will be a dues book check-up at the plant. Anyone who does not have his book will have to go home and get it.

If . . .

a) you are more than sixty days delinquent in dues, you may be suspended from the job.

b) You are six months delinquent, you will automatically be dropped from the rolls as a member in bad standing.

Who Got You Into This Mess?

Devotion to a friend, the noblest of human instincts, has been misused, and you have been misled. Regardless of whether there is an NLRB election, you will find that your confidence has been misplaced in a small group of selfish individuals at Peet's who would rather be "big fishes" in a small pond than just "average size" in a big pond. Ambitious, self-seeking men, are often willing to do anything to get one step higher . . . even tho they may injure the welfare and pocket books of their friends and fellow workers.

> Some "innocent" bystanders and "standbyers" will lose their AFL initiation fee and dues, while this provoked argument awaits settlement. When you consider the big fight ahead to improve our present wages, isn't it criminal that you should be used by unscrupulous people at the cost of your retroactive pay, pensions and seniority?

The Loss in the pocket will be yours, not the weak new Chemical Workers' Union.

Certain restrictions have been lifted from the War Labor Board procedure. Your Union demands the Company immediately institute:

a) 5c per hour additional for women.
b) 5c per hour additional for swing workers.
c) 10c per hour additional for graveyard workers.
d) 5 days' sick leave.

The Next Step—Sufficient wages per hour so that if the 40-hour week returns, you will not suffer take-home pay reduction.

Last Monday's special membership meeting attended by 2,000 members, and yesterday morning's membership meeting for graveyard workers, attended by 300 people, passed the following resolutions unanimously:

1) That CIO Warehouse Union, Local 6, participate, with the rest of the CIO Unions in this area, in a Wage Conference to establish the following benefits for all of our members.
   a) $1.15 per hour base pay for all warehouse workers.
   b) Elimination of sex differential, once and for all, so that women get the same pay as men.
   c) Jobs for all, regardless of race, color, sex or creed, and especially for returning veterans, to get all the benefits that they would have enjoyed had they not fought.

We Suggest—If you value your future at Colgate Palmolive Peet; if you enjoy your present job; if you would like to retain your seniority and pension, and receive the retroactive pay due you, we advise you to think carefully about anything told you—then tell the AFL disrupters that you are not interested in their form of phoney unionism.

WAREHOUSE UNION,
Local 6, I.L.W.U.

owu:cio

Received Aug. 31, 1945.

BOARD'S EXHIBIT No. 14

United States of America
Before the National Labor Relations Board

Case No. 20-R-1486

In the Matter of

COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS UNION, AFL

Mr. Bartley C. Crum, of San Francisco, Calif., for the Company.

Mr. Harvey E. Howard, of Oakland, Calif., and Mr. O. L. Farr, of Selma, Calif., for the AFL.

Messrs. Paul Heide and Charles Duarte, and Gladstein, Grossman, Sawyer & Edises, by Mr. Bertram Edises, of Oakland, Calif., for the CIO.

Mr. Benj. E. Cook, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION

Statement of the Case

Upon a petition duly filed by International Chemical Workers Union, AFL, herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Colgate-Palmolive-Peet Company, Berkeley, California, herein called the Company, the National Labor Relations Board provided for an appropri-

ate hearing upon due notice before Robert E. Tillman, Trial Examiner. Said hearing was held at San Francisco, California, on August 22, 1945. At the commencement of the hearing, the Trial Examiner granted a motion to intervene by International Longshoremen's and Warehousemen's Local 6, CIO, herein called the CIO. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the hearing, the Trial Examiner reserved ruling for the Board on motions made by the Company and the CIO to postpone any election to be directed herein until such time as the Board determines the validity of the charges filed by the AFL in case No. 20-C-1372. The motions are hereby denied.[1] The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Company

Colgate-Palmolive-Peet Company is a Delaware corporation, having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New

[1]The AFL on August 13, 1945, waived its right to protest any election directed herein on the grounds set forth in the charges filed by it in Case No. 20-C-1372.

Jersey, Brooklyn, New York, (a subsidiary), Jeffersonville, Indiana; Kansas City, Kansas, and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerine. During 1944, the gross sales of the Company at its Berkeley plant, the only plant involved in this proceeding, were in excess of $1,000,000, and the total sales to customers located outside the State of California amounted to more than 25 per cent of the gross sales. During the same period, raw materials having a value in excess of $1,000,000, were used at the Berkeley plant, of which more than 25 per cent was obtained from points outside the State of California.

The Company admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. The Organizations Involved

International Chemical Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Longshoremen's and Warehousemen's Local 6, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. The Question Concerning Representation

The Company has refused to recognize the AFL as the exclusive bargaining representative of its employees.

It is the contention of the Company and the CIO that a contract executed by them July 9, 1941, together with successive extensions, constitutes a bar

to this proceeding. Neither the original nor supplemental contracts contain a definite termination date.[2] In view of its indefinite duration and the fact that it has been in force for at least 1 year, we find that the contract and extensions thereof, do not constitute a bar to a determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.[3]

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

---

[2]The original contract reads, in fact, as follows:

"Section 18. Future Changes. The above constitutes an agreement between the Company and its employees, represented by the International Longshoreman's and Warehouseman's Union, Local 1-6, and shall remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representative."

Although an extension agreement was executed on July 24, 1945, the indefinite duration clause of the original contract remained unchanged.

[3]The Field Examiner reported that the AFL submitted 212 authorization cards; that 7 were undated and 205 dated August, 1945, and that there were 330 employees in the requested unit. The CIO relied upon its contract as establishing its interest in the proceeding.

IV. The Appropriate Unit

We find, substantially in accord with an agreement of the parties, that all production, maintenance, warehouse, mechanical, and laboratory employees at the Company's Berkeley, California, plant, including non-technical and non-professional laboratory employees, watchmen, assistant foremen, and working foremen,[4] but excluding office and clerical employees, chemists, foremen and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. The Determination of Representatives

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

Direction of Election

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9

[4] The record reveals that the assistant foremen and working foremen, while exercising some directive authority, do not come within the Board's customary supervisory definition.

(c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

Directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Colgate-Palmolive-Peet Company, Berkeley, California, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, including employees who did not work during the said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by International Chemical Workers Union, AFL, or by International Longshoremen's and Warehousemen's Local 6, CIO, for the purposes of collective bargaining, or by neither.

Signed at Washington, D. C., this 26th day of September, 1945.

PAUL M. HERZOG,
Chairman.

GERARD D. REILLY,
Member.

JOHN M. HOUSTON,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD

Received Oct. 3, 1945.

BOARD'S EXHIBIT No. 15

	Date for Which First Paid	Seniority Date	Position
Hixson, Glenn	9/ 1/45	2/11/24	Ass't Foreman—Pdr. Dept.
Alegre, Manuel	9/ 7/45	4/ 9/24	Frame Setter
Barboni, Vincent	9/ 1/45	3/21/27	Soap Blower
Heppeler, Martin	9/ 1/45	8/ 1/27	Ass't Stock Man
Zulaica, Albert	9/ 1/45	2/20/28	Gang Leader—Toilet Dept.
Rigo, Calixto	8/30/45	7/31/28	Checker—Shipping Dept.
Marshall, Frank	7/30/45	10/29/28	Stock Man
Sherman, Wm.	7/31/45	6/14/29	Ass't Shipping Clerk—T. A. Whse.
Ramirez, Sebastian	9/ 1/45	9/23/29	Pipefitter Helper
Azevedo, Thomas	8/30/45	9/24/29	Machinist Helper
Smith, Harry	7/30/45	10/15/30	Checker—Shipping Dept.
Olsen, Lincoln	7/31/45	10/18/32	Machinist
Perucca, John	9/ 7/45	5/ 4/33	Oiler
Hellbaum, Henry	8/30/45	5/16/33	Extra Man Boiler Room
Lee, Alden	9/ 1/45	2/19/34	Packing Supply Man
Moreau, Sanford	7/30/45	2/23/34	Electrician Helper
Anderson, Terry	9/ 1/45	2/24/34	Carpenter
Howard, Wm.	9/ 1/45	3/31/36	Pipefitter
Luchsinger, Dave	7/30/45	6/10/36	Laborer—Roustabout Dept.
Richmond, Frank	9/ 5/45	8/18/36	Marker—T. A. Whse.

	Date for Which First Paid	Seniority Date	Position
Ashworth, Robert	8/30/45	8/28/36	Jitney Driver
Denkowski, Felix	9/ 1/45	9/16/36	Batch Mixer & Soap Blower
Haynes, Clyde	7/30/45	2/ 8/37	Checker—T. A. Whse.
Lonnberg, Harold	7/31/45	6/29/38	Temporary Pipefitter Helper
Munoz, Manuel	8/30/45	1/18/43	Packer—T. A. Whse.
Thompson, Edwin	7/31/45	1/13/43	Ass't Tower Man
Tate, Nick	8/30/45	1/31/44	Pump Man
Souza, Manuel	9/ 1/45	2/ 1/44	Box Strapper
Navarro, Edward	9/11/45	12/ 5/44	Batch Mixer & Soap Blower
Gianarelli, Henry	9/ 1/45	1/14/45	Batch Mixer & Soap Blower
Perreira, Caetano	9/ 1/45	2/19/45	Salt Man
Cerrato, Ann	9/ 1/45	10/ 6/36	Machine Operator
Norris, Kay	9/ 1/45	1/ 9/41	Packer
Ros, Rose	9/ 1/45	7/13/44	Machine Operator
Paige, Ina Mae	9/ 1/45	1/25/45	Packer
Reyes, Ophelia	9/ 1/45	5/ 1/45	Packer
Young, Genevieve	9/ 1/45	4/19/44	Machine Operator
Gilbert, Rose	9/13/45	8/21/45	Seterouter

Received Jan. 10, 1946.

RESPONDENT'S EXHIBIT No. 1

August 6, 1945

Progress Report

The present attempt to use the Hitler tactics of stirring up race hatred is apparent, due to the activities of those who are afraid they will lose their strangle-hold on the workers. All people, regardless of race, color or creed, are and have been working with us. A statement has been made that the International Chemical Workers Union, A. F. of L., discriminates against colored people. Nothing could be further from the truth. Chemical Workers Union will neither favor nor dis-favor anyone for his God-given birth status. There is not and never has been any race distinction in the issue at this plant. The attempt to insert it into events is proof enough in itself that the charges against our former officials are true, and some issue had to be brought into the picture to shield and draw attention away from the real issues. All of you remember our good friend, Bill Hunter, colored, who was the janitor at 158 Grand Avenue.

In Local No. 160 of the International Chemical Workers Union, Fresno, there are about 300 members, of which 275 are colored. There are two other Locals belonging to the International Chemical Workers Union which are 100% colored. They are accorded full rights and benefits that any other member is entitled to. They have full vote in the Council, and one of their members, Roy Fitzgerald, is a member of the Resolutions Committee of the

District Council. Anyone who discriminates in the International Chemical Workers Union will be expelled from membership. All that the employees of this plant are asking is to express their choice of the Union they want to belong to. Surely the Warehousemen's Union is American enough to leave it up to the employees.

General meeting for Peet's employees, Wednesday, August 8th, 4:15 p.m. Finnish Brotherhood Hall, 1970 Chestnut St., Berkeley.

Note: Dues and fees will be collected at the Finnish Brotherhood Hall, between 3:00 p.m., to 6:00 p.m., Daily.

RESPONDENT'S EXHIBIT No. 2

Progress Report

August 7, 1945

Information From Your International Chemical Workers Union Committee

What Kind of Union Do We Intend to Have? The answer to that question is:

1. We shall have a Union that will be controlled by the workers.

2. We shall set the time and place for Our meetings.

3. We shall instruct our officials what we want them to do and have them assist us in doing it.

4. We shall elect our own officers, control our own money, dues and assessments.

5. We shall have meetings twice a month at a

hall close to the plant. If the membership desires the meetings will begin at 4:15 p.m., and adjourn as soon as we have completed our business.

6. We shall have the right to have meetings that will center around Our wages, working conditions, problems, and welfare.

7. We Will Not Stand for Anyone, Big or Small, Telling Us That We Have to Do This or That Because "They" voted for "It" Over in San Francisco.

Stewards Position

We do not intend to stand Any trial under dictator influence of the former officials. Such a trial would merely be a stage show—designed to impress a lot of people—the verdict would already be determined—Guilty! For what? Our right of free speech? Our right to Fight for the wishes of the membership? We are now members of the International Chemical Workers Union, A.F.L., we are in the Chemical industry and have no connection with the Warehouse group.

What Caused the Lid to Blow Off
(Truth Not Lies)

Building up over the last year and a half—the two most recent items were—first the suspension of our stewards. Imagine if you please—over a year ago we carried out one of our few remaining rights, to elect, by an overwhelming majority, the Stewards of Our choice. At the time an attempt was made to shove in some characters who no one wanted. We took a secret ballot and defeated them

without question. But in doing so we left a sore spot which has never quite healed. The result being that "they" have been gunning for the Stewards and their friends who voted for them ever since. When the Stewards got sick at being snipped at, fed up on carrying out responsibility that should have been carried out by the officials, and felt they had a right to voice a protest, they were immediately ordered discharged by the Union. Prior to and leading up to this are such events as trying to obtain a paper from WLB, regarding vacation rates, Which Was Down at the Union Hall for Two (2) Solid Months, and in spite of requests, pleading, and almost begging, we could not get the officials to bring that one little piece of paper out to the plant. Is it our dues or our welfare they are interested in?

Another recent event showing the interest of our Former officials, was a clear cut case of a broken contract, and in the meeting that lasted about two and a half (2½) hours, our supposed-to-be business agent strained himself with the grand total of just eight (8) words which were in answer to a direct question. What Would You Call Such Events? Lazy? Stupid? Or plain disregard for the rights of employees at this plant? We are sure we don't know the answer to That question, but—Brothers and Sisters, we are sure of one thing, No One Is Going to Fire Our Stewards without a H—— of a fight. That, Brothers and Sisters, Is Just What Happened!

Let Us Repeat (There Is Not and Never Has Been Any Racial Issue). This Lie in Itself Ought

to Convince Those Who Would String Along With, and Pay Money to Elements That Would Stoop to Such a Trick!

Don't Forget!

Important news at your general meeting for Peet's employees, Wednesday, August 8th, 4:15 p.m. Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley.

You can contact Your Union from 9:00 a.m., to 3:00 p.m., at HIghgate 5922, and from 3:00 p.m., to 6:00 p.m., at BErkeley 8807.

Watch for Your Progress Report, we will be along again tomorrow.

Note: Dues and fees will be collected at the Finnish Brotherhood Hall, between 3:00 p.m., to 6:00 p.m., Daily.

RESPONDENT'S EXHIBIT No. 3

Progress Report

August 10, 1945

Preliminary conference was held August 9th at 10:30 a.m., before Merle D. Vincent, Jr., NLRB. The Warehousemen's Union Refused the American rights of the Colgate-Palmolive-Peet Soap Company employees to choose their rightful collective bargaining agents. The Soap industry, a manufacturing plant, deals with a chemically made soap. The employees in this plant belong in the chemical industry. You are chemical workers and can never

receive your rightful rates of pay as long as you remain in the Warehousemen's Union. The chemical rates for the majority of persons employed in this plant are much higher than you are now receiving.

Among your officers chosen to fight for you and represent you is Brother Eugene Lasaret-May. He was chosen by the membership because of his intelligence, leadership and sincerity. We are certain that the unanimous election of Brother Lasaret-May to the office of Vice-President of Your International Chemical Workers Union is a great advantage to all concerned.

The signed membership to date in the International Chemical Workerrs Union is well Over the two hundred (200) mark. Your Charter has been sent for and will be here in a few weeks.

The firm position of the Stewards and Committee was conspicuous in contrast to the shaky position held by the Warehouse Officials. When your Stewards declared that the Warehousemen's Union did not respect the wishes of the membership at this plant they were certainly right. Before the NLRB the Warehousemen's Union Officials refused to permit you the American right of self organization and a chance to select your own bargaining agent by an election. The Warehouse Union fears the results of an election and freedom of choice! They are compelling us to take action which will result in the Government ordering a formal hearing and then forcing the Warehouse Union to an election.

When the new contract and rights are securely

in the hands of the employees again, a regular election by secret ballot will be held to determine your permanent officers and Stewards. Anyone in good standing with International Chemical Workers Union will have the opportunity to assume the duties of these offices.

We Sincerely thank those people who participated in our meetings, and have shown their sincere desire to select their own bargaining agent.

RESPONDENT'S EXHIBIT No. 4

September 12, 1945

Bulletin No. 10

In view of the fact that we, as employees of C.P.P. Co., have been temporarily deprived of the right to exercise our American rights of free thought and speech, handed down to us by our forefathers, we find it necessary to use this letter as a medium for expressing our thoughts and speech.

Four of the biggest wars ever engaged in by this country were fought so men, women and children could have the right that our Creator meant us to have.

1—The Revolutionary War—fought to free us from enslavement by England.

2—The Civil War—fought to free the colored race from enslavement by the white race.

3—World War I—fought to prevent Germany from enslaving the rest of the world.

4—World War II—just concluded, the biggest and costliest in the history of man, fought to prevent the Germans, Italian and Japanese and other dictators from enslaving the rest of the world and destroying Democracy.

All of these wars have ended in favor of freedom and liberty. However, we now have a few individuals right here in our midst who act and smell as if they might be descendants of Adolph Hitler. None of the individuals that we are going to speak of took any part in this last war just concluded. We don't think they even know why this war was fought. Maybe they think it was just a little show to see who had the biggest guns and the most and largest aeroplanes and ships. We don't believe these individuals know or care anything about our United States Constitution and the Bill of Rights, freedom of thought, freedom of action, freedom of speech, and freedom to choose their own representatives. If they have ever heard of them, they are undoubtedly too stupid to grasp the meaning of them. For their information; the Constitution of the United States and the Bill of Rights give all Americans the right to legally do as they please and say what they want, as long as they stay within the laws of the country. No one has the right to tell others how they should live their lives. The four wars mentioned above were fought to eliminate individuals such as these mentioned above.

In this last war millions of men, women and children sacrificed their existence on this earth to free the world of such individuals and millions of others

will suffer the rest of their lives. True, many of us have been deprived the means to our food, clothing and shelter, because we had the courage to be real Americans and thought our own thoughts, disagreed with that which we hated and despised; but this is only temporary. To those of you who want to know—They Will Be Back. Your rights, and ours, even though it is a temporary sacrifice for us, will be safe-guarded and restored. There will be an election in the very near future. Do not believe the lies that Chuck Grube is spreading around.

It is hard to believe that a few unscruplous (which means 'without principle') individuals can go into a plant such as C.P.P. Company and tell the management what to do, kick the employees around, permit such men as Chuck Grube to continue to insult his fellow-workers and try to coerce them and change their minds and even fire who they please. However, the wheels of justice grind slow but sure and in a matter of time these individuals will reap what they are sowing. We have decided that there is no individual, or group of individuals, big enough to take our American rights away from us, that have been protected and retained for us who are still alive at such a terrible cost in death and suffering.

We have just started to fight and we don't intend to quit until we have been freed from enslavement in the C.I.O.

RESPONDENT'S EXHIBIT No. 5

September 15, 1945

Bulletin Number 11—Progress Report

Where is all the democracy that the officials of the Warehousemen's Union have been howling about?

All of you know, of course, about the secret meeting held last Wednesday. Aren't secret meetings supposed to be banned? Nevertheless, they had one and had such famous people as Fearless Ed, and of course, dear little Georgie Squires was there, the people's choice—ha! ha!

We hear their attorney was the main speaker of the evening and he had a wonderful crowd of almost 23 people. At the meeting it was pointed out that your Progress Report made them very nervous and they didn't like what was in it. Why? Because it is the truth. We also hear their attorney admitted that there would be an election held at Peet's in less than two weeks, and all those terrible things that are in your bulletin must be stopped.

That's what Hitler said about the allied underground of the freedom-loving peoples of the nations he conquered and crushed. However, even Hitler knew he was beaten, and these dictators know it too. The employees of Peet's are not beaten or crushed and they know they will win, and soon. Even if the management has permitted Chuck Grube to intimidate, coerce and browbeat their employees in the plant. Even if the Company has taken the interpretation of that phony contract that

the Warehousemen's officials told them to take. Even if the Company did fire loyal employees because they had the courage to be Americans. There are a lot of people in the plant who would certainly like to know what Mr. Woods found out when he took certain employees for a drink last Monday. Of course, the Company is supposed to be neutral.

The dirty, little, yellow sheet put out by the Warthousemen's Union says, "Be sure to elect stewards from your departments." They elected stewards all right, not the people at Peet's, so that those stooges could join hands with the Company and get a lot of people who had the guts to say they didn't like the Communist controlled organization around them discharged. It so happens there are stewards in Peet's—elected by the employees there and the Warehouseman's Union would certainly give a good deal to know who they are. You can be sure they are not stewards whom the Warehousemen's Union and the Company choose to recognize as such. You can be sure there are no Fearless Eds or Georgie Squires included.

A telegram has been received from the National Labor Relations Board in Washington and our case is being worked on and we expect to have some very good news for you in the near future. You will have an election not far off from today. Those employees who were discharged will have the right to vote. Remember, those 47 men and women who were discharged in behalf of all of us have not lost faith.

Read your bulletins and be sure to see that they are distributed. A meeting will be held in the near

future and we will look forward to seeing all of you there.

There will not be a meeting Monday, September 17th, unless you are further notified.

RESPONDENT'S EXHIBIT No. 6

September 18, 1945.

Bulletin No. 12—Progress Report

In the last meeting of the Warehousemen's Union, Local 1-6, C.I.O., they tried to raise the dues seventy-five cents. Do you remember when it was stated by officials of the Warehousemen's Union that dues would not be raised? When they said our stewards were liars? Well, this proves who told the lie. Our stewards were one hundred per cent correct.

We believe a good many employees at Peet's would like to know what happened to the money that was supposed to go to the American Allied War Relief Fund. We understand that they had a mighty tough time about putting over the seventy-five cent raise in dues. We understand it was voted down twice in the same meeting but by hook or crook it was put through. Remember—"By their works thou shalt know them." A labor union is only as good as the officials who guide the destiny of that union and you can see what's happened to the Warehousemen's Union—Ahem.

Paul Heide must have been very embarrassed

when every person called to be a member of the Trial Committee refused to accept. We understand Heide was angry and stated that he was surprised that there was so little interest shown. Weren't the people interested in the C.I.O.? After refusal, a Trial Committee was selected. May be pulled the names out of his pocket—just in case. Certainly no one would want to be on a Trial Committee to try people for freedom of speech and the courage of their own American convictions, and we salute those people who refused. Did you know that it was stated at the meeting that Sherman, Lonnberg and Thompson would not be given a trial—that they were through? Is that American? Are they dictators that they can say who shall be through and who shall not be through? We know the employees of Peet's will give them their answer and fling the challenge of freedom in their faces. If tactics such as these are permitted, dictatorship will spread over our entire nation.

In the Labor Herald of September 13, the Warehousemen's Officials must have known that the majority of the employees of Peet's disliked and considered as intruders Charlie Leacock, Fearless Ed Bopp, George Squires and Manuel Da Cruz, so they gave their life histories and told them how badly these men want the C.I.O. Well, when this election is over, they will probably need the C.I.O. Leacock says, "I don't ask them to do what I say, just because I say it—I just ask them to do the right thing." Leacock, you tell the people who to do and you expect them to do it. The employees at Peet's

don't need to be told the right thing to do—they already know. Maybe these men need to find out what the functions of stewards are. They should know that stewards are supposed to fight for the people and be their servants, not dictators, not threaten the people with what will happen to them if they don't do so and so. Leacock stated, "The Warehousemen have been organized at Colgate-Palmolive Peet Company since 1936. We organized and got these benefits." Maybe Heide & Co. should tell Leacock the truth. Evidently they haven't, so we will. The people at Peet's didn't know the Warehousemen's Union existed in 1936. The employees belonged to I.L.A. and a Federal Labor Union in 1936. The Warehousemen's Union never secured any benefits for the employees. It was the workers, through their own stewards, elected by the majority of the employees, who made conditions as they are. Fearless Ed says, "Leacock's right, they'll just have to start negotiating over again." It is about time, isn't it? Fearless Ed says, "The air needed to be cleared up." Fearless, you're right, the air will be cleared up and you, Leacock, Squires, and Manuel Da Cruz, will know just what we mean. Remember, you cannot tamper with the people's freedom. Remember, you cannot threaten, browbeat, and curse American men and women. Remember, you cannot —not in America—take people's food, clothing and shelter and their right to a decent, honest living from them, because you might not like them—and there isn't room in American for anyone like that. Remember, "A new broom sweeps clean."

When the International Chemical Workers Union, Local 233, wins this election, and as soon as possible thereafter, there will be a hiring hall, centrally located, for the members of the International Chemical Union, Local 233.

RESPONDENT'S EXHIBIT No. 7

September 27, 1945

Bulletin No. 13—Progress Report

No doubt all of you have met the new Shop Steward, Pauline Goulard. Cute tricks the C.I.O. officials are pulling these days. Yes, it is true, approximately fifteen persons, out of 330 employees, voted to have Pauline be the Shop Steward. The C.I.O. officials met certain employees at the gate just before midnight. Funny—we could never get them out before. Now they are out at the plant day and night. Wonder why? Is it because they know an election is very, very near? Now, all the so-called stewards are just one big, happy family. They think they have the Company behind them, and they will have a lot of fun, threatening and browbeating their fellow workers, but they are only fooling themselves. No wonder the employees of Peet's intend to vote for the International Chemical Workers Union, A.F.L. At least they'll get a square deal there.

Remember the man the Company put on Supersuds as packer? Did he get the women's rate of pay? No, he received a man's rate of pay for doing

the same work under the same conditions. That's the fault of the C.I.O. officials. The International Chemical Workers Union, A.F.L., believes that when a woman does the same work, under the same conditions as a man, she should receive the same rate of pay. Why do the women in Colgate-Palmolive Peet Company pay union dues into the C.I.O. for that sort of treatment? We now have a chance to change that system, and a lot of other undemocratic, un-American methods that have been going on in that plant since the C.I.O. came up there.

About that election—The rumor from Mr. Wood's office, that was spread throughout the plant, could have been true. Mr. Howard received a telegram from Washington, stating that a decision would probably be handed down this week. That could have been last Monday. Mr. Crum, the Company attorney, was in Washington last Monday and could have telephoned Mr. Woods about our election. The National Labor Relations Board in Washington, after their decision, would Air Mail the letter to the Regional Board in San Francisco, and then the parties involved would get together and set the date. Mr. Howard called the N.L.R.B. Tuesday afternoon and they had not heard of any decision. He called Mr. Woods and Mr. Woods denied that Mr. Crum had called him and told him an election had been ordered. However, we know an election will be ordered—and soon—and we know the I.L.W.U., Local 1-6, C.I.O., will lose that election and we will have a people's organization, run by the employees, for the employees, and we also know that a "new broom sweeps clean."

Those men and women whose livelihoods were taken away from them, because they stood up and fought for the rights of all of us, are faithful and enduring and know that you are backing them up.

Of course you know of the marvelous fight now under way, against the adoption of a new union constitution, by the Marine Cooks and Stewards Association, C.I.O., and of the paper they are issuing, showing definitely what a grip the Communists are trying to get on our American men and women. You will hear more about this later.

We want you to know that another group of employees, all colored, from another company, have now joined your local, International Chemical Workers Union, A.F.L., Local 233, and they will be initiated, with your approval, at your next meeting. The International Chemical Workers Union, A.F.L., Local 233, sincerely invites every negro at Colgate-Palmolive Peet Company to become a member.

By the way gals—how do you like your wonderful raise of five cents, and also your wonderful raise to $3.00 dues? They gave you five cents and took it right away from you and made you pay the C.I.O. Nice game, if you can work it.

You will be notified of any official moves. If you are in doubt, or hear any rumors, or you have anything you feel the membership should know, you know who to get in touch with, and what will be done about it.

RESPONDENT'S EXHIBIT No. 8

September 29, 1945.

Bulletin No. 14—Progress Report

At 3:15, Friday afternoon, a Special Delivery, Air Mail letter was received from Washington, and in it was the announcement all of us have been waiting for. The election has been ordered by the National Labor Relations Board in Washington, D. C., and signed, sealed and delivered to us. We wonder how Heide & Co. feel now. How the Company feels, when they said they had a valid contract. When they kicked our brothers, sisters, friends, wives and husbands out of the plant.

Mr. Howard will meet with the National Labor Relations Board, officials of the Warehousemen's Union, and the Company, just as soon as it can possibly be arranged, the early part of next week, and set the day for the election.

The order directing the election states, "We hereby direct that the question concerning representation shall be resolved by an election by secret ballot among the employees who were employed during the payroll period immediately preceding the day of this direction (September 26, 1945), including employees who did not work during said payroll period because they were ill, or on vacation or temprorarily laid off, to determine whether they desire to be represented by the International Chemical Workers' Union, A.F.L., Local 233, or by the International Longshorehemen's and Warehousemen's Union, C.I.O., Local 1-6, for the purpose of collec-

tive bargaining." In other words, brothers and sisters, we knew what we were doing and, as you have already found out, the C.I.O. officials and the Company did not know what they were doing; they guessed.

Those men and women whose livelihood has been taken from them shall return, and they shall vote. There will be several special meetings in the near furture and almost everyone who works at the plant shall be allowed to attend. Wait for your next Progress Report.

Those of you who wish to pay dues will be able to pay them at the meeting, as usual.

Once again, the International Chemical Workers' Union, A.F.L., wishes to invite every colored man and woman in that plant into the International Chemical Workers' Union, Local 233, A.F.L. We want you, and we want you to know that your problems will be everyone's problems. Remember—"All for one, and one for all."

RESPONDENT'S EXHIBIT No. 9

October 2, 1945.

Bulletin No. 15—Progress Report

Important!

There will be a special meeting Wednesday afternoon at 4:15, at the Finnish Brotherhood Hall, Mr. Howard and the Union Committee will meet with the Company officials and the C. I. O. officials

and decide the actual date of the election. Be sure to be there to find out the date and have all of your questions answered.

Once again, the International Chemical Workers Union, Local 233, A.F.L., extends a sincere invitation to all of the colored people in this plant to join the International Chemical Workers Union, Local 233, A.F.L. and be present at the meeting. This meeting will be open to almost every employee at Peet's.

Your September and October dues will be accepted Wednesday afternoon at the metting. Remember, now is the time to get on the winning side.

RESPONDENT'S EXHIBIT No. 10

October 9, 1945

Bulletin No. 16—Progress Report

Many of us have read the very, very phony bulletin put out by the Warehousemen's Union, C.I.O. They mention that wages, sick leave, working conditions, closed shop agreements, pensions, seniority and future job security will be at stake when you cast your ballot. How right they are! They talk about future job security. There will be no future job security if the C.I.O. wins this election. They have already kicked out and taken away the means of livelihood of 45 employees, and from what we hear, if the C.I.O. wins, there are 150 or more names

Respondent's Exhibit No. 10—(Continued)

on their list. One of those might be you. How do you know?

Why don't the Warehouse Officials tell the truth? Since when did the C.I.O. ever give us any pensions, seniority, closed shop, working conditions (ahem!) and—so far as our wages are concerned, we are chemical workers, not warehousemen, and can never receive Chemical Workers' rates (they are much higher), so long as we are members of the Warehousemen's Union, Local 1-6, C.I.O. Our wages have been low, and the treatment afforded the women in that plant by the C.I.O. Officials is the rottenest deal so far. As far as their program goes, anyone should be able to see through that. There is nothing new about a forty hour work week, and the minimum for men and women is certainly "baloney."

How can we trust the C. I. O. Officials when they have betrayed us and lied to us in the past? What assurance have we that they will not continue to do so in the future? The women should have had that five cents increase in 1941—why did they have to wait almost four years to obtain it for them? Paul Heide admitted, under oath, that they hadn't even prepared a schedule for approval from the War Labor Board. Regarding the penalty for hard and dirty work—the Chemical Workers' Union has had that for almost five years.

They said they had recently received over $12,000.00 in back pay for shift workers and women.

How come some of the workers at Clorax went back four months (1st day of June 1944) and ours only went back to October 12, 1944. Quite a little difference, eh? At Port Chicago the Chemical Workers Union has just won a case of almost $150,000.00 in back pay, not for women alone, but for everyone (and there are only half as many workers there as at Peet's), and have one of the finest agreements in the country. West Vaco Chemical Company, Newark, has an outstanding agreement in wages and fine conditions, and there were only five or six persons voting in the election at West Vaco.

They asked if Chemical Workers Union, A.F.L. is strong enough locally and nationally to achieve demands for more wages, shorter hours and better working conditions. Not only are we strong enough, but we have in effect agreements throughout the State of California, since the close of the war, which have taken care of post-war problems, 25% increases, equal pay for equal work for women, closed shops, and numerous other advantages, and we don't have to strike to get them. The International Chemical Workers Union believes strikes should not be called, except as a last resort. Evidently the C.I.O. is not interested in your food, clothing and shelter and how you get it, when they call a strike or kick somebody off the job. We hear that the C.I.O. Officials want to pull a big strike at Colgate-Palmolve Peet Company, if they win this election. Are you prepared to go on strike for the C.I.O. for a couple of months?

Not only is the Chemical Workers Union strong

enough to get a closed shop for you, but we are strong enough to defeat the C.I.O. in this election by a great majority. They say this election is your life, which is probably true. Life doesn't mean too much to those who do not hesitate to kick people out of their jobs, just because they had the courage to say they didn't like the dictatorial methods of the Warehousemen's Officials. How can we continue to pay our dues to a union that threatens us, prohibits us from going on our jobs, kicks our brothers, sisters and friends out of their jobs, and which has refused, for years, to come down to the plant and help settle our problems? A union which will shove in appointed Shop Stewards who will make people afraid to speak to friends and neighbors on the job, for fear they might lose their own jobs?

Are you still willing to fight for the freedom that is America? Our men and women fought for four, long years across the seas to preserve this freedom—all you have to do to preserve your freedom in this plant is to vote for the Chemical Workers Union, A.F.L., Local 233. Is freedom worth that much to you? We think it is.

Of course, you know of the battle the rank and file committee is putting up in the Marine Cooks and Stewards Union, C.I.O., because of a communist constitution they are trying to shove down the members' throats. Do you know that the officials of the Marine Cooks and Stewards Union, C.I.O., kicked out the most popular members of their union? Remember—a leopard does not change its spots. Certainly, if you are honest with yourself, you cannot

vote for an organization such as that. Remember—it was the Warehouse Officials, C.I.O., who tried (but failed) to inject discrimination into this battle. They are the ones who are continually reminding the negro that he is a negro. They are the ones who are continually telling the negro he is being discriminated against. Surely no one else in this world knows the negro's problems as well as he does, himself, and he does not find it necessary to have these problems brought before him by the C.I.O. Warehouse Officials.

Chemical Workers' Union, Local 233, A.F.L., will win by an overwhelming majority. Don't be frightened by the propaganda put out by the C.I.O.—consider it as such—and vote for the union you know will best represent your interests——

The International Chemical Workers Union
Local 233, A.F.L.

RESPONDENT'S EXHIBIT No. 11

October 11, 1945.

Bulletin No. 17—Progress Report

Isn't it strange that scrap iron from the United States to the Japs was returned to us in the form of bombs and bullets, ready to enslave us and take from us our freedom of speech? Isn't it strange now, that our money that we earned and paid into the Warehouse Union as dues, is being used to pay

the salaries of Warehouse Union Officials, to fight us, kick us off our jobs, threaten us and deny us our freedom of choice and speech? We hope and pray that we do not have to go through another Pearl Habor, within our own nation, before we recognize an enemy.

We, who have fought for so many years to maintain seniority as a means of security from unjust lay-offs and discharges, have seen our seniority disregarded as a non-existing factor by those we have paid and who are supposed to help us retain it. In reality, they have gone out of their way to destroy in the Colgate-Palmolive Peet Plant the very things it has taken us so long to build. We joined a union to unite our strength and money, to obtain justice from a Company who did not recognize seniority, vacations, relief periods, time and one-half for more than eight hours, double time for Sundays and holidays, shop stewards and our right to bargain collectively. The Warehousemen's Officials and the Warehousemen's Union did not get these rights for us, we, the employees of Colgate-Palmolive Peet Company, obtained these things without their help. We did not force them out of the Company without a long and hard-fought battle. Your Shop Stewards, elected by all the people at Peet's, with your help and your consent, are the ones who achieved them, and when one of our brothers asked the Officials of the Warehousemen's Union for help, they only laughed and said there were more important plants

than Peet's. Our strength was in the united stand we could present.

Now a few selected officials of the Warehousemen's Union have chosen to take the old line Company policy of laying off employees, regardless of senority, changing them to different departments, regardless of how many years they have put in, kicking them out and taking their means of food, clothing and shelter from them. Is it because they feel they are the supreme authority and have forgotten who gave them their jobs to begin with? Well, brothers and sisters, we have fought this thing before and won and now we are in the fight again and we don't care if it's the Company or the Warehouse Union Officials, or who the H—— it is, we know how to fight and we will and must retain our unity. All 45 employees outside the plant, plus around 300 inside, must have one purpose in mind—defeat the phony Warehousemen's Union, C.I.O., officials in the coming election by voting for the International Chemical Workers' Union, Local 233, A.F.L., by such a huge majority that the company and the former union will never again attempt to trample on our rights.

Remember, the Company is watching this very closely and thousands of men and women in labor are also watching this election very closely. Dare we fail so many? Even if we win by a close majority, the Company might take the position that we are divided so——

We must win by a huge vote.

Not one of us can leave even the most remote

item undone. Nothing, regardless of how small, must be overlooked. Talk to your fellow-workers, see that they understand the issues, be sure they get there to vote. Remember, the time is short now and you must be alert to avoid being left in the clutches of a thing, which in the opinion of many, would stop at nothing.

Because of the lies and deceit of the Warehouse Union Officials, we realize some confusion prevails in the plant, so we must make two things clear:

(1) Any employee of Peet's, who was hired between July 31, 1945, and September 23, 1945, who has been required to pay an initiation fee to the Warehouse Union, between the above dates, will not be required to pay another initiation fee to the Chemical Workers Union, Local 233, A.L.F.

(2) All those employed at Peet's, prior to July 31, 1945 (who have not already joined), need only pay $2.00 Initiation Fee to become members of this fighting union.

The election will be held Tuesday, October 16, 1945, in the Clubhouse, 7th and Pardee Streets, Berkeley; 6:00 a. m. to 8:30 a.m. and 2:00 p. m. to 5:30 p. m. Remember, this may be your last opportunity to save yourself and others from a real strangle-hold. This fight goes far deeper than just union against union. Sinister purposes, deep-seated hatred, long standing vengeance—are very likely to be your reward if we should, by chance, lose this election. So, for your own sake, do what you can now.

RESPONDENT'S EXHIBIT No. 12

October 12, 1945.

Bulletin No. 18—Progress Report

How long must we continue to be threatened, coerced and intimidated? How long must we continue to permit C.I.O. officials to stop us on the streets and ask us who we will vote for? Don't they know this is America—that our vote is secret and they will know only too well how we have voted by 7:30 Tuesday night? They will know only too well that we have on by a large majority and rejected their un-American, communistic, slimy tactics. How long must we continue to permit men with the intelligence of Leacock to physically attack our own people in the plant we have helped build? Yes, it is true, Leacock, having authority for the first time in his life, asked one of our brothers on the job who he was voting for and when our brother said it was none of his D—— business, Leacock followed him up the stairs and attempted to beat him up. Lucky for Leacock that our brother kept his head or he might have been in the hospital today. Are these the kind of stewards you want to represent you for better wages, hours and conditions of employment? The day of the club is over—we must have statesmen—intelligence—to win our battles—not ignorance. However, the C.I.O. Warehousemen officials believe in threatening, coercing and frightening people to the extent that they do not even dare to say who they are for on their own job for fear they will be kicked out.

Did you hear about the strike the C. I. O. officials want to pull at Peet's when this is over? Are you prepared to pound the pavements without any money for two or three months? In order to save yourself from this, be sure to vote in the Right Hand Corner of your ballot next Tuesday, for the Chemical Workers' Union, A.F.L. Remember, all laid off employees who were temporarily kicked out by the dirty tactics of the C.I.O. officials will vote in the Right Hand Corner for the Chemical Workers Union, A.F.L. Remember, there are 150 or more employees that the C.I.O. officials have already got ear-marked to kick out of their jobs if they win this election. So get your friends—talk to them—see them on the job—on the street—in their homes—and tell them, in order to save their jobs they must vote for the Chemical Worker's Union, A.F.L., in the Right Hand Corner. Remember—we welcome into the Chemical Workers Union, A.F.L., any employee who is honest and decent, regardless of his race, creed or color. The C.I.O. officials are the ones who have continually brought up the racial issue. Don't be fooled—they are only seeking to divide and conquer.

The International Chemical Worker's Union, Local 233, A.F.L., has a fine contract drawn up ready to be considered by all parties concerned, just as soon as this election is over, and it will increase your wages and better the hours and working conditions in that plant. Remember—you are Chemical Workers and you can never receive the high Chemical Worker's rates if you vote for the Warehousemen's

Union. We do not intend for anyone to work for less than $1.00 an hour in that plant, man or woman, equal pay for equal work for women—and many other conditions—and above all—freedom to do and say what you want without fear of being kicked out of your job.

Vote for the Chemical Worker's Union, A.F.L., in the Right Hand Corner of Your Ballot

Don't forget the special meeting for the swing shift workers at 1:00 o'clock, in the Finnish Brotherhood Hall, Monday, October 15th, and the special meeting for the day workers at 4:15 P.M. of the same day. Don't be afraid to attend—the C.I.O. won't be able to hurt you any more.

You don't need to have your book with you or your dues paid up in order to vote. The United States Government regards you as employees only and this election is being held to determine what union you wish to belong to.

RESPONDENT'S EXHIBIT No. 13

October 13, 1945.

Bulletin No. 19—Progress Report

Remember?

Remember when we were forced to pay political action dues and our money was spent in behalf of candidates we were actually against? Was all our money that was forced from us spent for the pur-

pose it was intended for—or was it spent for—something else?

Remember when officials of the Warehouse Union, C.I.O., forced us to buy dance tickets and if we didn't, we couldn't pay our dues and if we didn't pay our dues we were kicked out or fined. Remember they didn't even consult the membership—just forced us to buy them—or else?

Remember when our stewards requested the Warehouse officials to come to Peet's to adjust our differences and they refused? Remember? Remember months that many of us didn't even see an official of the Warehouse Union? They were willing to take our dues but gave us nothing in return for them.

Remember when the members who worked at Peet's went to a meeting and we had nothing to say about our problems? * * * They were decided by strangers and people from other plants.

Remember when the Warehouse officials and the Company officials said we could not have an election? When the Company permitted Chuck Grube and the officials of the Company to say we would not have an election until February, 1946? When the Company permitted certain employees to browbeat, lie, threaten and coerce the employees under them?

Remember when our dues were $1.50 per month and we had three doctors and $250.00 death benefit? Remember * * * the C.I.O. officials took these conditions away from us * * * they said too much

money was going for sick benefits. (As if they cared whether the people were sick or well.)

Remember when the Warehouse Officials, C.I.O., transferred around sixty thousand dollars from the death benefit fund to the general fund? Why? What happened to our money? Remember when they said they would not raise the dues and in less than eighteen months they decided to raise them and had their stooges at the meeting and did raise them—over our protests? And remember, they are now forcing the women to pay the same dues because they got a raise of a few cents. Did you know the Warehouse Union officials are planning to raise the dues to $4.00 per month? * * * If they win * * * which they won't! Remember, when we decided to stand behind our stewards because they fought for our rights? When you walked out for two and a half days because you were determined to stand up and see that your American privileges were not trampled upon?

Remember when we delegated four employees to meet with the Management in behalf of our stewards and when they arrived they met the officials of the Warehouse Union, C.I.O.? Remember how they were insulted in the Management's offices and then kicked out of their jobs?

Remember when 25 men stopped 8 women and 5 men and would not even let them go on plant property, and when the women proved their books were paid up, those lousey C.I.O. officials just laughed and kicked them off their jobs.

Remember when the Warehouse Union, C.I.O., arranged to inject some phoney stewards over us, and when some of those phoney stewards let a little power go to their heads and tore some of our fellow-employees' shirts from them because they decided to vote differently?

Remember when one of those stewards and some strangers went into the plant on one shift and threatened one of our people if they continued to even talk about the A. F. of L.?

We Must Vote for the Chemical Workers' Union, A.F.L., in the Right Hand Corner.

We must, and will, destroy this rule-by-force. For they cannot kick our pals out—they cannot kick any of us out. Let's vote in the Right Hand Corner—for a free union.

Remember, it is for you to decide—Democratic freedom (the right to speak—to think—to act—as Americans) or do you prefer threats, violence and dictatorship of the C.I.O. branch of communism—Vote in the Right Hand Corner.

Remember, Asia, China, Poland, now completely controlled by Russian Communism * * * next all of Europe * * * America can be next * * * America is the last hold out of Freedom * * * Vote in the Right Hand Corner.

Remember—your vote now saves your future security, your job, your home, your American rights, your country, from the curse of communism. Vote in the Right Hand Corner.

Remember—your boy and mine * * * do you want

them to come home to fight our battles here on the home front, too? Vote in the Right Hand Corner.

Remember—Divide and conquer is the program of all dictatorships. We must all Vote in the Right Hand Corner to show our strength.

Remember the struggle of the C.I.O. (tool of Communist Russia) is seeking to divide working men and women against each other!

Remember—the C.I.O. will use color, race and creed to divide and conquer. Your militant effort Now can change the tide. Our future is too important to let Moscow tell us how to think and act.

RESPONDENT'S EXHIBIT No. 14

Bulletin No. 20—Progress Report

October 15, 1945.

Are You Interested in Dollars and Cents?

The officials of the Warehouse Union are not content with misleading the people, permitting their stewards to coerce their fellow-workers on the job—not content to permit an election based solely on the truth, as a result they sent to the homes of Peet's employees a bulletin showing rates and certain conditions between Peet's employees and West Vaco Chemical Company employees. For the information of the officials of the Warehouse Union, the contract they spoke of was in effect in 1937. We don't know whether this is due to their ignorance and deceitfulness, or just a continuance of the very stupid blunders they have been making, when they

refer to a contract that was done away with over eight years ago. However, even then the employees at West Vaco Chemical Company were receiving swing shift and graveyard differentials and higher rates than are now being paid at Peet's—all this—over eight years ago

For example: What you will receive when you vote in the Right Hand Corner for the Chemical Worker's Union, A.F.L., is as follows:

	Warehousemen's Rates		Chemical Workers Rates
Sea Foam Machine Oper.	$ .96½		$1.25
Palmolive Mach. Oper.	1.00½		1.25
All Maintenance Dept. Rates	1.39	Up to	1.60
Laborers	.92½	From	1.00 up
Pressmen	.96½		1.11
Driers	1.00½		1.25
Soap Blowers	1.00½		1.25
			Women's Rates
Machine Operator	.80		1.00 to 1.11
Soap Packers	.75		1.00

Remember—Other facts enter into the working conditions in the plants referred to by the officials of the Warehouse Union, of which they were not aware, or did not care to mention—some are—In many of the plants where the Chemical Worker's Union has contracts, the Company furnishes modern homes for $18 per month, and furnishes free meals for overtime work in excess of the regular eight hours. Also they have access to Company gardens in which to raise their own food—all chemical plants have been getting shift differentials for years, not just retroactive to October 12, 1944. In most plants where we have Chemical Worker's

Unions, their working clothes are furnished by the Company.

Wouldn't the 45 men and women who have been kicked out of their jobs because they wanted decent working conditions feel silly to return to Peet's at rates far below those they were receiving? Do you think for a moment they would promote a program for lower rates?

Don't let the Warehouse Officials lie to you and get away with it. Chemical Workers are going for rates that will exceed the Warehouse Union scale by At Least 7½c per hour. Peet's does not have a closed shop, they only have preferential hiring and the Chemical Workers Union intends to tie up the loose ends of this and many other shameful conditions that have been allowed to exist and enter into a contract with the Company that will make us proud to belong to a union—an honest union is sorely needed in this town and we intend to supply it.

At Springfield Cedar, the employees sweat under a terrible system by agreement of the Warehouse Union and the Company. A piece work system that all real American labor, men and women, should be against. The Officials of the Warehouse Union are permitting the employees of Springfield Cedar to work for rates as low as fifty cents an hour—starvation wages. Why don't they do something about these people, or have they neglected them as they have the employees at Peets? Is it because they fear they will lose your dues if they don't promise $1.15 per hour?

You are listed as commercial workers and the Warehousemen could not and would not send you to the docks and terminals with a higher rate of pay until every available man holding terminal and dock books, and there are plenty of them, has been sent to work, so—they lied to you again—their contracts mean nothing to you. However, when the Chemical Worker's Union wins this election tomorrow, and just as soon as possible, thereafter, we will have our own hiring hall, owned by you and operated for you.

Remember, all of you who are colored, it is the Warehousemen's Union Officials, C.I.O. who are constantly reminding you of your color. They want to set you against one another so that they may divide and conquer, and we, the Chemical Workers at Colgate-Palmolive-Peet Company sincerely invite you to join the Chemical Worker's Union, A.F.L., by marking (x) in the Right Hand Corner, at the election tomorrow.

Remember this election is to determine which union you wish to join and no one knows, not even the Warehouse Officials, how you vote—you alone know that, but in case you become confused, mark (x) in the Right Hand Corner.

What is left of the Warehouse Union contract at Peet's will be through, done and over with when you vote Tuesday in the Right Hand Corner.

Correction: Bulletin 19—typographical error "we had three doctors" corrected statement to read "we had free doctors".

RESPONDENT'S EXHIBIT No. 15

Sample Ballot

"Vote Right in the Right Hand Corner"

United States of America
National Labor Relations Board

Official Secret Ballot

This ballot is to determine the collective bargaining representative, if any, for the unit in which you are employed. If you spoil this ballot, return it to the Board Agent for a new one.

Mark an "X" in the square of your choice

International Longshoremen and Whs'emen Union Local 1-6 C. I. O.	NO UNION	International Chemical Workers Union Local No. 233 A. F. L.
[ ]	[ ]	[x]

Remember

(Take me to the polls with you)

(1) Remember—Your job is at stake in this election.

(2) Remember—To Vote for Your own Union, Control Your own money, Elect Your own Officers and Stewards.

(3) Remember—This is Your country, are You willing to sacrifice it for Communism!

(4) Remember—Your vote in the "Right Hand Corner" will return Your friends back to work, (They fought for you—you vote for them) also protect Your future.

Place Your "X" in the Right Hand Corner
Bring Us Back to Work

Your Stewards and Friends Fought for You——
Vote for Us and Have a Good Clean Union

RESPONDENT'S EXHIBIT No. 16

[Warehouse Union Letterhead.]

July 31, 1945.

Colgate, Palmolive, Peet Company,
6th & Carlton Streets,
Berkeley, California.

Att.: Mr. C. A. Altman

Dear Mr. Altman:—

This is to notify you that the employees named below have been suspended from membership in this union and are no longer members in good standing.

Pending the determination of charges which have been filed against these persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your employ until such time as you receive word from us in regard to their status as members in this union.

Ed Thompson, 1034 Virginia Street, Berkeley, Calif.

H. Lonnberg, 1245 - 60th Avenue, Oakland, Calif.
Lincoln Olsen, 623 Kearney, El Cerrito, Calif.
William Sherman, 1515 Kains Avenue, Berkeley, Calif.

Your immediate attention to this request will be appreciated.

Very truly yours,

/s/ PAUL HEIDE,
Vice-President.

PH:ES
owu-cio
Special Delivery

INTERVENER'S EXHIBIT No. 1

[Stamped] Warehouse Union Local 6, ILWU
158 Grand Avenue, Oakland 12, Calif.

July 28, 1945.

Mr. Frank Marshall,
Rt. 1, Box 241,
Walnut Creek, Calif.

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for the following violations of the Constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of Membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights and privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, ILWU.

/s/ PAUL HEIDE,
Vice-President for the General Executive Board.

PH:ES
owu-cio

Registered—Return Receipt Requested.

INTERVENER'S EXHIBIT No. 2

Employees Welfare Ass'n.

July 30th, 1945: (4:15 P.M.) Finnish Brotherhood Hall, 1970 Chestnut St., Berkeley, Calif.
Wm. Sherman, President,
E. H. Thompson, Rec. Sec.

An address by Bro. Thompson stressing fact of past policy of present bargaining agents, I.L.W.U., and what our future course of action should be.

Motion by Thompson that we withdraw from the C. I. O. and International Longshoremen and Warehousemen's Union District #1 Local 6. Form an Independent Union and seek affiliation with another International. Motion seconded. Vote carried unanimously in favor 205 opposed None.

Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If shop Steward don't work, nobody works. Carried unanimously.

Motion is Ed Bopp be allowed to work only if he discontinue being I.L.W.U. Shop Steward. P. S.: Bopp appointed Shop Steward by I.L.W.U. officials July 30th P.M.

Motion to elect a two (2) member negotiating Committee. Nominated and seconded, were E. H. Thompson, Wm. Sherman, H. Lonnberg and Lincoln Olsen. An amendment to the motion that the 4 members nominated to be elected amendment seconded. Amendment carried and motion carried unanimously.

Motion to elect 2 trustees. Motion seconded. Bill Stolba, Carl Carlson, Ralph Hugel, Gleen Hixson and Chas. Scutti nominated. Sloba—72 Carlson—19 Hiegel—62, Hixson—93, Scutti—19. Hixson and Stolba elected.

General discussion about getting 5 Shop Stewards back on the job. P. S. 5 Shop Stewards, H. Smith, Frank Marshall, Clyde Haynes, Sanford Moreau and Dave Luchsinger were by motion duly made and seconded which unanimously to hold office as Steward till elections are held.

Official Report

July 30th, 1945: Wm. Stolba, L. Olsen, Dave Luchsinger, Wm. Sherman, E. H. Thompson following general meeting visited an attorney for legal

reasons as to best way to complete severing relations with I.L.W.U. 1-6. Telegrams were sent to I.L.W.U. 1-6. Oakland and San Francisco, Calif.

Telegram was also sent to Bert Railey, Mgr., C.P.P. Co.; 800 Carlton St., Berkeley, Calif.

You are hereby notified of action taken by more than 200 employees of C.P.P. Co., all being former members of I.L.W.U. 1-6 and being more than 50% of total employees have withdrawn and severed relations with I.L.W.U. as collective bargaining agent.

Adjournment.

E. H. THOMPSON,
Rec. Sec.

INTERVENER'S EXHIBIT No. 3

July 31st, 1945 (12:00) (Noon)

The meeting was called to order by Bill Sherman.

The discussion started out with some of the things that took place this morning. July 31st at the plant.

1. Mainly the rehiring of our shop steward.

Suggestion carried that we choose one man from each department to be a source of information by phone for future action.

1. Tom Azevedo—Sea Foam—Trin. 8618.

Al Zullaci—Toilet Dept.—Thorn. 7041.

Terry Anderson—Carpenter—Kellogg 42442 Sw 8009.

W. C. Howard—Pipe Shop.

Henry Hellbawm—Boiler—La 5-0487.

Discussion that took place, a vote was taken again to continue the meeting until shop Stewards all returned to work. One suggested that they be put to work in the office. Railey opposed it as yet.

Meeting continued till Aug. 2, 1945. 5:00 PM.

New Employees representative on job.

Martin Heppler—

Manuel Allegre—

Bob Ashworth

Closed Meeting August 2, 1945. 5:00 P.M.

Motion was duly made and seconded to employ Harvey E. Howard, as Labor Consultant, and grant him the power to sign all necessary papers for the employees of Colgate-Palmolive-Peet Co. relative to Wages, Hours and conditions of employment. Motion carried unanimous.

Motion was duly made and seconded that the Employees Welfare Association of the Colgate-Palmolive-Peet Co. be disbanded and affiliation and membership in the International Chemical Workers Union, A.F.L., be applied for. Unanimously carried.

Motion was made and seconded that L. Olsen be authorized to sign all necessary papers with Harvey E. Howard. Unanimously carried.

Motion was made and seconded that all employees return to work pending a National Labor Relations Board election. Motion carried. A collection was

called for the help defray expenses and $87.50 was received.

Adjournment.

E. H. THOMPSON,
Rec. Sec.

INTERVENER'S EXHIBIT No. 4

Warehouse Union—C.I.O.
Local 6
158 Grand Avenue, Oakland 12, Calif.
Higate 5045

Mr. Harold Lonnberg
1245 60th Ave.
Oakland, Calif. July 31, 1945.

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of Membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights and privileges, pending a trial as provided for in

Article 15 of the Constitution of Warehouse Union, Local 6, ILWU.

/s/ PAUL HEIDE,
Vice-President for the General Executive Board.

PH:ES
Owu-CIO

Registered—Return Receipt Requested.

Received Aug. 31, 1945.

INTERVENER'S EXHIBIT No. 5

Constitution, By-Laws and Rules of Order. Warehouse Union, Local 6, International Longshoremen and Warehousemen's Union.

Declaration of Principles

We, the warehouse men and women of San Francisco and Bay Tributaries, in order to build and maintain a strong Union organization; provide for the defense of our common interests; promote the general welfare of our members and other wage earners and uphold the rights and dignity of our labor and its organized expression, have determined that we shall be guided by the following principles:

1. An injury to one is an injury to all.
2. All rights and duties belong, without discrimination, to each member of the organization as long as they comply with the rules of the organization.
3. The right of each member to receive such a

fair and just return for his labor as will make possible sufficient leisure for education and recreation.

4. The right to be treated in a decent and respectful manner by the employer at all times.

5. To use all possible safety measures in our work as not to injure brother and sister members; to promote good will among the wage earners in our industries, and to reduce the great hazards of our occupation.

6. To regulate our conduct, both as a union member and as individuals, so as to raise the living standards of those employed in our industry and make our occupation what it should be, an honest and secure means of earning a decent livelihood, protection against accident, sickness and old age.

7. To assist other unions whenever possible in their resistance to attacks on their wages and working conditions and for the attainment of their demands.

8. Basing ourselves upon these principles, we are determined to do everything within our power, collectively and individually, and as an important sector of the organized labor movement, to promote the best interests of our members, and other wage earners when this becomes necessary, believing as we do that the solidarity of the labor movement is the only way to preserve and improve the living standards of wage earners.

9. We pledge ourselves to labor united and for the principles set forth herein to perpetuate our Union and to work concertedly with the general labor movement to bring about the highest standard

of living to all workers and have adopted the following Constitution, By-Laws and Rules to aid us in abiding by these principles.

* * *

Article IX

Membership Duties

Section 1. The first duty of each member is to be a true and loyal member of this Local; to foster and advance all objectives beneficial to the cause of labor; to purchase only union-made goods, and not to patronize any place where unfair labor is employed.

* * *

Obligation

I do most solemnly on my honor affirm that during my association with the Warehouse Union, Local 6, I will remain a true and faithful member, observe its laws, and labor as far as lies within my power to further the advancement of my trade so that my fellowmen can receive and enjoy with me the just fruits of our labor; that I will attend the meetings of this Union as often as it is possible for me to do so; that I will not reveal, unless by permission, any of the workings that may at any time be confided in me; and I do further promise to assist a member of the Warehouse Union, Local 6, when and wherever I may find him or her in distress; that I will never knowingly commit an act injurious to the interests of him or her, but will help to preserve the rights of his or her household

inviolate; and finally I will strive to create a fraternal feeling between our Union and organizations who mean to uphold the dignity of labor, and affirm the nobility of all who earn their bread by the sweat of their brow; that I will not deal in any manner with any person who is an enemy of labor. To this I pledge my honor.

INTERVENER'S EXHIBIT No. 6

Before

Warehouse Union, Local 6
International Longshoremen's & Warehousemen's Union

In the Matter of

WAREHOUSE UNION, LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, CIO,

Plaintiff,

vs.

CLYDE W. HAYNES, DAVE LUCHSINGER, FRANK MARSHALL, SANFORD MOREAU, HARRY A. SMITH, H. LONNBERG, LINCOLN OLSEN, ED THOMPSON, and WILLIAM SHERMAN,

Defendants.

DECISION OF TRIAL COMMITTEE

The members of this Trial Committee were chosen by drawing lots at a regular meeting of the

Union, as provided in Article XV, Section 6, of the Constitution of Warehouse Union, Local No. 6 (ILWU). Brother Nelson Wilson was chosen as Chairman.

None of the members of this Trial Committee knew anything personally about this case before the trial or has an axe to grind. We are a rank and file committee and we have tried to decide this case fairly on the evidence presented at the trial and nothing else. Everything we say here is the unanimous opinion of all of us.

The trial was held in the Green Room at 158 Grand Avenue, Oakland, California, on October 3, 1945. The four signers of this decision, Brothers Nelson Wilson, Claude Larrabee, Frank Carabello and Johnny Wilson, showed up at the trial, but Brother Manuel Farias was unable to attend. Paul Heide was prosecutor.

Brother Heide put in the record an affidavit showing that the charges had been sent by registered mail to all the nine defendants,

Clyde W. Haynes	H. Lonnberg
Dave Luchsinger	Lincoln Olsen
Frank Marshall	Ed Thompson
Sanford Moreau	William Sherman
Harry A. Smith	

He also put in the record return receipts from the post office showing that all these defendants had gotten the charges, except William Sherman, and his letter was returned by the post office showing he refused to accept it. Under Section 7 of Article

XV all that is necessary is that the charges must be mailed by registered mail, and it does not prevent the trial if the defendant refuses to accept the charges.

None of the defendants showed up at the trial. This brings up Section 11 of Article XV which says that if the accused fails to appear for trial without an excuse which satisfies the Trial Committee, such failure to appear may be considered by the Committee as conclusive proof of guilt. Two of the defendants, Frank Marshall and Harry A. Smith, wrote in at the last minute claiming to be sick, but they didn't show any doctor's certificate or anything except their own statement. The Committee gave a lot of thought to this matter and decided that the excuses were not good ones and were made just for delay.

The charges were then read and the Chairman asked for pleas of guilty or not guilty. Naturally since the defendants didn't show up, no pleas were made. However, we decided that we were not going to rely on Section 11 and insisted on hearing the evidence in the case.

The charges against Brothers Haynes, Luchsinger, Marshall, Moreau and Smith, the shop stewards at Colgate-Palmolive-Peet, are as follows:

> We, the undersigned, members of Warehouse Union, Local 6, I.L.W.U., hereby bring charges against the following members of the Union for violations of the Constitution of Warehouse Union, Local 6, I.L.W.U., and

specifically for violating the Oath of Obligation, the Preamble, the Declaration of Principles, and the provisions of Article 9, "Membership Duties," of the Constitution:

Clyde W. Haynes	0-1280
Dave Luchsinger	0-1152
Frank Marshall	0- 757
Sanford Moreau	0-1921
Harry A. Smith	0- 790

We also charge the above-named members with the following specific violations of our Constitution and our Union policies, as adopted by majority vote of the membership:

1. Attaching and violating the no-discrimination policy of the I.L.W.U.

2. Using their positions as Stewards to spread false and misleading information among the membership concerning the policy and program of the Union, the activities and position of the Union officers, the status of the Union treasury and the status of the contract between the Union and Colgate-Palmolive-Peet Company.

3. Encouraging non-payment of dues and non-attendance at Union meetings by members whom they were responsible to check and keep in good standing.

4. Failure and refusal to honestly represent the grievances of members employed by the Company.

5. Refusal to post all bulletins and official

notices submitted to them by the Union officers in conformity with regular Union procedure and with actions taken by the Union membership.

6. Conspiring with enemies of the I.L.W.U. and of the labor movement to destroy the Union.

Louis Gonick	0-2343	Jim Nelson	0-2192
Name	Book #	Name	Book #
Charles Duarte	0- 817	Joe Gomes	0-1581
Name	Book #	Name	Book #
George Canete	0- 140	Charles Murray	0 132
Name	Book #	Name	Book #
Lauro Cortez	0-2253	David A. Wilson	0-2276
Name	Book #	Name	Book #

The charges against Brothers Lonnberg, Olsen, Thompson and Sherman are as follows:

We, the undersigned, members of Warehouse Union, Local 6, I.L.W.U., hereby bring charges against the following members of the Union for violations of the Constitution of Warehouse Union, Local 6, I.L.W.U., and specifically for violating the Oath of Obligation, the Preamble, the Declaration of Principles, and the provisions of Article 9, "Membership Duties," of the Constitution:

H. Lonnberg	0-1900
Lincoln Olsen	0-1941
Ed Thompson	0-1982
William Sherman	0- 788

We also charge the above-named members of the Union with the following specific violations of our Constitution and our Union policies, as adopted by majority vote of the membership:

1. Attacking and violating the no-discrimination policy of the I.L.W.U.

2. Deliberately spreading false and misleading information among the Union membership concerning the policies and program of the I.L.W.U., the activities and the position of the Union Officers, the status of the Union treasury and the status of the contract between the Union and Colgate-Palmolive-Peet Company.

3. Conspiring with enemies of the labor movement to weaken and destroy the I.L.W.U.

4. Leading a movement for non-payment of dues and non-attendance at Union meetings among the membership at Colgate-Palmolive-Peet Company.

5. Making libelous and defamatory statements concerning other members of the Union.

6. Promoting and leading a strike at the Colgate-Palmolive-Peet Company in open violation of the Union's no-strike pledge.

Name	Book #	Name	Book #
Louis Gonick	0-2343	Jim Nelson	0-2192
Charles Duarte	0- 817	Joe Gomes	0-1581
George Canete	0- 140	Charles Murray	0- 132
Lauro Cortez	0-2253	David A. Wilson	0-2276

We will take up first the charges against former Shop Stewards Haynes, Luchsinger, Marshall, Moreau and Smith. The testimony showed that these men have been working against the established policies of the union for a long time. For example, the Union's policies against discrimination on account of race or color. Back in the early part of 1944 Marshall refused to take up the beef of a Negro member at Peet's named Harrison because he "didn't like him." The other stewards backed him up on this and all of them were taken before the Grievance Committee and found guilty of conduct unbecoming stewards and given a reprimand for their treatment of this Negro brother. Then there was the Ulysses Norman case, where a union member at Peet's said out loud in the dressing room that there are too many Negroes in the Union, the quicker we get them out the better (only he didn't say "Negro.") Brother Norman, who is a Negro, filed charges against the brother who made this statement. Defendants Marshall and Sherman publicly defended the right of this member to make such attacks on Negro fellow members. The position of the ILWU against spreading race hatred and prejudice is well known and has brought much praise to the organization. We believe that defendants Marshall and Sherman were working against the best interests of the Union by taking this position and were violating the principles of the Union and their oath of membership.

There was a lot of evidence showing that all of the stewards fell way down on the job when it came

to carrying out the duties of their office. For instance, they refused to put Section 10 of the Peets contract into effect, which called for setting up stewards for each department. They refused to select a Chief Steward as required by the contract. They showed poor judgment in regard to what grievances to present to the management. They pushed many phony grievances. They failed to attend meetings of the Executive Council, which was their duty as stewards, and also membership meetings. This was a poor example for rank and file members, in regard to attending union meetings. It all mounts up in our opinion to sabotage of the steward's job.

The Union's political action program took a bad beating from the stewards. For instance they refused to carry out the mandate of the union membership in regard to financial support for the National Citizens Political Action Committee. They sabotaged collection of funds for the defense of Harry Bridges, President of the ILWU. They opposed the program for wiping out the Little Steel formula. They bucked the Union's program in regard to enforcing OPA regulations.

Toward the end of May, 1945, they even refused to call a meeting of the employees at Peet's to discuss current contract negotiations, air the grievances of the rank and file and elect stewards for the coming year. Brother Lou Gonick, Business Agent, demanded three separate times that they arrange to call such a meeting, but the stewards kept putting him off with phony excuses, and after they finally

agreed to call a meeting they broke their promise, claimed they forgot all about calling the meeting. Marshall, Smith and Haynes were the ringleaders but all five of them played this game. Finally Brother Gonick went ahead and made his own arrangements for the meeting and gave the stewards notices of the meeting to post, but they refused to post them. This was bound to hurt the Union in the eyes of the employees. It prevented the Union's officers from contacting the membership at Peet's and giving them a first-hand account of their activities, especially the current contract negotiations. We believe the stewards were clearly guilty of working against the best interests of the Union and its members.

The Trial Committee gave a lot of thought to the evidence in this case and we are unanimously to the effect that these defendants, Haynes, Luchsinger, Marshall, Moreau and Smith are guilty of the charges. It is too bad that they didn't show up themselves because we would have liked to hear their side of the story. But they had a fair chance to appear and they didn't take it, and so we have got to make our decision on the evidence in the record, and on that evidence we have got to find them guilty.

On the question of punishment, as provided in Article XV, Section 9, of the Constitution. We think these men have betrayed their trust as officers of this Union and have shown themselves to be unfit for further membership in our organization. Therefore we unanimously recommend that

Clyde W. Haynes, Dave Lachsinger, Frank Marshall, Sanford Moreau and Harry A. Smith be expelled from this Union.

In regard to the second set of charges, against Lonnberg, Olsen, Thompson and Sherman, the evidence showed that these four men were responsible for pulling the only wartime strike that members of this Local ever were guilty of. Our Union has a right to be proud of its record in regard to the wartime no-strike pledge, which was 100% except for what happened at Peet's. Their leadership in the strike at Peet's on August 1, 2 and 3, 1945, was responsible for stopping production of thousands of gallons of glycerine, a vital war material needed by our armed forces in the field. This is very serious, because nothing could give the Union and the labor movement more of a black eye, when our nation was fighting for its life against its enemies.

On top of this, the evidence shows that three of these men, Sherman, Thompson and Lonnberg, made libelous and defamatory charges against Paul Heide and other officials of the Union, such as being racketeers, looting the Union's treasury and so forth. The payoff is that none of these men ever brought charges against Heide or any other Union officer under the Constitution, although under Article XV, Section 1, they were duty-bound to do this. Or even made any charge of misconduct on the floor, at a union meeting, although they had plenty of opportunity to do this. We disapprove very strongly of such wild and irresponsible conduct.

One thing we want to make very clear. We do

not hold it against these men, or any of the other defendants, that they apparently joined the A F of L Chemical Workers Union. If they thought the men could get a better deal through the A F of L, that was their right under the Wagner Act, as we understand it, just as A F of L members have the right to change to the CIO if they want to. After all, that is a question for the rank and file to decide. Undermining union policies is something else. Policies such as political action, equal rights for all races and colors, and the wartime no-strike pledge are fundamental to the welfare of the Union and its members. The union cannot and should not tolerate such conduct.

We declare that defendants H. Lonnberg, Lincoln Olsen, Ed Thompson and William Sherman are guilty of the charges. We recommend that they lose all rights as union members and be expelled from this organization.

October 10, 1945.

/s/ CLAUDE M. LARRABEE,
/s/ JOHNNY WILSON,
/s/ NELSON WILSON,
/s/ FRANK CARABALLO.

INTERVENER'S EXHIBIT No. 7

Before: Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union

In the Matter of

WAREHOUSE UNION, Local 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, CIO,

Plaintiff,

vs.

MANUEL ALEGRE, TERRY ANDERSON, ROBERT ASHWORTH, TONNY AZEVEDO, VINCENT BARBONI, ANN CERRATO, FELIX DENKOWSKI, HENRY GIANNARELLI, HENRY HELLBAUM, MARTIN HEPPLER, GLEN HIXON, WILLIAM HOWARD, ALDEN LEE, MANUEL MUNOZ, KAY NORRIS, INA PAIGE, K. PERIERA, JOHN PERUCCA, MIKE RAMIEREZ, CALIXTO RIGO, OPHELIA REYES, F. L. RICHMOND, ROSE ROS, MANUEL SOUZA, NICK TATE, GENEVIEVE YOUNG, ALBERT ZULAICA,

Defendants.

DECISION OF TRIAL COMMITTEE

We, the members of the Trial Committee, being Brother P. Lind, Chairman; Brother M. Pavalini, Brother Joe Quartarola, Brother J. Silva, and

Brother M. Freitas, have met together and reached our decision in the case of the members at Colgate-Palmolive-Peets who went on strike.

The charges filed against defendants Nick Tate, Robert Ashworth, Manuel Munoz, Tommy Azevedo, Calixto Rigo and Henry Hellbaum were as follows:

> We, the undersigned members of Warehouse Union, Local 6, ILWU, hereby bring charges against the following members of the Union for violation of the Constitution of Warehouse Union, Local 6, ILWU, and specifically for violating the declaration of principles, oath of membership, and Article 9, Section 1:
>
> | | |
> |---|---|
> | Nick Tate | Tommy Azevedo |
> | Robert Ashworth | Calixto Rigo |
> | Manuel Munoz | Henry Hellbaum |
>
> We also charge the above named members of the Union with the following specific violations of our Constitution and our Union policies as adopted by majority vote of the membership:
>
> 1. Deliberately spreading false and misleading information among the Union membership concerning the policies and program of the ILWU, the activities and position of the Union officers, the status of the Union treasury and the status of the contract between the Union and Colgate, Palmolive, Peet Company.
> 2. Conspiring with enemies of the labor movement to weaken and destroy the ILWU.

3. Leading a movement for non-payment of dues and non-attendance at Union meetings among the membership at Colgate-Palmolive-Peet Company.
4. Making libelous and defamatory statements concerning the other members of the Union.
5. Promoting and leading a strike at the Colgate-Palmolive-Peet Company in open violation of the Union's no-strike pledge.
6. Persisting, although warned many times to discontinue, in their disruptive and agitational activities which is hampering production and peaceful work of the vast majority of our members at Colgate-Palmolive-Peet Company.

Dated: August 9, 1945.

CHARLES DUARTE,
Book # 0-817.
LOUIS GONICK,
Book # 0-2343.

The charges filed against the rest of the defendants were as follows:

We, the undersigned members of Warehouse Union, Local 6, ILWU, hereby bring charges against the following members of the Union for violation of the Constitution of Warehouse Union, Local 6, ILWU, and specifically for violating the declaration of principles, oath of membership, and Article 9, Section 1:

Rose Ross	Martin Heppler
Esther Young	Bill Howard
Ina M. Paige	Alex Hixon
Ophelia Reyes	Alden Lee
Kay Norris	Al Barboni
Ann Cerrato	Felix Denkowski
Henry Giannarelli	F. L. Richmond
Albert Zulaica	Terry Anderson
Manuel Souza	K. Periera
Manuel Alegre	John Perucca
Mike Ramirez	

Dated: August 9, 1945.

CHARLES DUARTE,
Book # 0-817.
LOUIS GONICK,
Book # 0-2343.

Registered letters setting forth the charges were sent to all the defendants. Also, all the defendants were given bills of particulars.

The trial was held on December 17, 1945, at 8 o'clock P.M. in the Green Room at 158 Grand Avenue, Oakland, and all of the defendants were there. Brother Lind, Chairman, was in charge. After the charges were read, all of the defendants said that they pleaded Not Guilty. A statement was then read for the defendants by Kay Norris, raising several legal points. We have considered these points and do not agree with them. For example, in regard to the statement that the defendants did not get a copy of the charges, each of them received a letter from the Union stating the charges exactly. Fur-

thermore, each one received a bill of particulars stating that the only issue was in regard to fomenting or participating in an unauthorized strike in wartime, in violation of the ILWU's no-strike pledge. All the defendants knew what they were charged with and had a chance to defend themselves.

After the statement was read by Kay Norris, the following defendants walked out of the trial:

Manuel Alegre	Kay Norris
Terry Anderson	Mike Ramierez
Henry Giannarelli	Ophelia Reyes
Henry Hellbaum	F. L. Richmond
William Howard	Genevieve Young

The rest of the defendants stayed on and were given opportunity to put on a defense.

The evidence showed that on August 1, 2 and 3, 1945, while the United States was at war with Japan, an unauthorized strike was pulled at Colgate-Palmolive-Peet plant in Berkeley, where Local 6 is the bargaining agent. This was in violation of the solemn pledge made by our Union many times during the recent war not to strike until the defeat of our enemies. For example, as late as July 13, 1945, the Union went on record:

> "That we reaffirm our wartime No-Strike pledge. The war in the Pacific comes first. The fighting men must receive their weapons and supplies without stint, without interruption or delays of any kind."

When President Truman came into office the Executive Board adopted the following pledge, which the membership of Local 6 confirmed:

> "On behalf of the entire membership of the International Longshoremen's & Warehousemen's Union, we renew and give to President Harry S. Truman and the Nation our solemn pledge that until the war is ended with the unconditional surrender of Japan we will not strike, stop work, or cease or slow production for any reason whatsoever.
>
> "We reiterate that this is an unconditional pledge, given in the knowledge that our first duty is to our Nation and that, despite provocation, we must take no action that will imperil our Nation or cause the prolongation of the war or cause the unnecessary loss of so much as one Allied life.
>
> "We further make the positive pledge that we will do everything in our power to shorten the war by lending ourselves to intelligent solution of the manifold manpower problems and to the development of all possible means to speed production."

The Trial Committee wishes to point out that the ILWU had a 100% record in regard to upholding this pledge. We all know there was plenty of provocation for strikes during the war, but the members of this Union knew that the boys on Iwo Jima, Tarawa and Kwajelein had a lot of provocation, too. The only black mark on the Union's 100%

No-Strike record during the war was the wildcat stoppage at Peets. This lasted about two and a half days and held up production of glycerine for the armed forces, a vital war material.

The evidence showed that each of the defendants took part in this unauthorized wartime strike except Rigo and Alegre, and the evidence showed that these two were guilty of fomenting and encouraging the strike. As a matter of fact, the defendants who stayed on at the trial later admitted that they were guilty of participating in the strike. We find that the following defendants are guilty of participating in an unauthorized strike in wartime, contrary to the ILWU's no-strike pledge:

Terry Anderson	Kay Norris
Robert Ashworth	Ina Paige
Tommy Azevedo	K. Periera
Vincent Barboni	John Perucca
Ann Cerrato	Mike Ramierez
Felix Denkowski	Ophelia Reyes
Henry Giannarelli	F. L. Richmond
Henry Hellbaum	Rose Ros
Martin Heppler	Manuel Souza
Glen Hixon	Nick Tate
William Howard	Genevieve Young
Alden Lee	Albert Zulaica
Manuel Munoz	

We find that the following defendants are guilty of fomenting and encouraging an unauthorized strike in wartime, contrary to the ILWU's no-strike pledge:

Manuel Alegre	Calixto Rigo

Some of the defendants raised the point that a couple hundred people walked out at Peets and yet only 36 were brought up on charges. The answer is that as a Trial Committee we have the right to try only the people who are charged. We have not got the right to try anybody who is not charged. When somebody is charged, it is the duty of the Trial Committee to decide whether they are guilty or innocent, not to decide whether somebody else is guilty or innocent. The Constitution sets up a perfectly good way of bringing charges against members of this Union and if anybody wants to find out whether the other two hundred members at Peets are guilty of violating the no-strike pledge, let them file charges under the Constitution and bring them to trial. The fact that a lot of other people may be guilty does not excuse these defendants. They are all over 21 and responsible for their actions.

The next question is what should the punishment be. In regard to the ten defendants who walked out and refused to stand trial, they have disgraced the good name of the ILWU and yet their conduct shows that they do not repent of their actions. They are not entitled to any consideration from this organization. We therefore recommend that the following defendants be expelled from the Union and deprived of all their rights and privileges as Union members:

Manuel Alegre	Kay Norris
Terry Anderson	Mike Ramierez
Henry Giannarelli	Ophelia Reyes
Henry Hellbaum	F. L. Richmond
William Howard	Genevieve Young

In regard to the other 17 defendants, the fact that they were willing to stand trial before their fellow members and answer for their actions is a point in their favor. They were honest enough to admit their guilt and asked for lenient treatment from this body. Therefore we make the following recommendation for punishment of:

Robert Ashworth
Tonny Azevedo
Vincent Barboni
Ann Cerrato
Felix Denkowski
Martin Heppler
Glen Hixon
Alden Lee
Manuel Munoz
Ina Paige
K. Periera
John Perueca
Calixto Rigo
Rose Ros
Manuel Souza
Nick Tate
Albert Zulaica

1. They shall be permanently deprived of their present seniority at Peet's.

2. They shall be put on probation for one year from date, during which time they shall not hold office or trust in the local. At the end of the year the Grievance Committee shall consider their case, and if it finds that they have conducted themselves as good Union members, they shall be restored to all the rights and privileges of members of the Union in good standing.

3. During the period of probation, they shall have the right to work out of the hiring hall and to be employed in Union houses on the same basis as other members of the local, without discrimination.

Dated: December 24, 1945.

PAUL N. LIND,
Chairman.
MANUEL FREITAS,
MARIO J. PAVLINA,
JULIUS R. SILVA,
JOSEPH QUARTAROLO.

INTERVENER'S EXHIBIT No. 8

Before: Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union.

In the Matter of:

WAREHOUSE UNION, LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, CIO,

Plaintiff,

vs.

CLYDE W. HAYNES, DAVE LUCHSINGER, FRANK MARSHALL, SANFORD MOREAU, HARRY A. SMITH, H. LONNBERG, LINCOLN OLSEN, ED THOMPSON and WILLIAM SHERMAN,

Defendants.

Board Room, Warehouse Union, Local 6
158 Grand Avenue, Oakland, California

October 3, 1945. 2:30 P.M.

Before Trial Board:
Nelson Wilson, Chairman.
Claude Larrabee
Frank Caraballo
Johnny Wilson

Appearances: On Behalf of the Plaintiff:
Paul Heide, Vice President, Warehouse Union, Local 6, 158 Grand Avenue, Oakland, California.
Present: Emma Stanley, Office Secretary, Warehouse Union, Local 6, I.L.W.U., CIO.

Intervener's Exhibit No. 8
Proceedings Before Warehouse Union—(Con't)

PROCEEDINGS

Chairman Wilson: I will now call this meeting to order. May I have two Sergeants at Arms, please?

(Whereupon, two members of Local 6 volunteered as Sergeants at Arms.)

Chairman Wilson: Who is the Prosecutor?

Mr. Heide: I am, Mr. Chairman.

(To the Reporter): Do you want to take my name? Paul Heide, Vice President of the Warehouse Union, Local 6, ILWU.

Chairman Wilson: Brother Larrabee will now read the names of the Defendants.

Mr. Larrabee: The first name is H. Lonnberg. Is Brother Lonnberg present? (No response)

Lincoln Olsen? (No response)

Ed Thompson? (No response)

William Sherman? (No response)

Clyde Haynes? (No response)

Dave Luchsinger? (No response)

Frank Marshall? (No response)

Sanford Moreau? (No response)

Harry A. Smith? (No response).

Chairman Wilson: Are any of you present? (No response)

Mr. Prosecutor, proceed with your case.

Mr. Heide: I think, Mr. Chairman, that the next order in the trial is the reading of the charges.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

The fact that the Defendants are not present here does not prevent the Trial Committee from proceeding with the trial. They have all been duly notified, and evidence will be introduced to show that they have been so notified, in accordance with the Constitution of the Union.

Mr. Larrabee: Do you want me to read the six charges?

Mr. Heide: Mr. Chairman?

Chairman Wilson: Yes.

Mr. Heide: Does the Trial Committee have a copy of the charges that have been filed against the Defendants in this case?

Chairman Wilson: Yes, they have.

Mr. Larrabee: We have a copy here (indicating document).

Mr. Heide: I think it is proper that the charges be read at this time.

Chairman Wilson: Will you read the charges, Mr. Larrabee?

Mr. Larrabee: I will read the charges.

> "We, the undersigned, members of Warehouse Union, Local 6, I.L.W.U., hereby bring charges against the following members of the Union for violations of the Constitution of Warehouse Union, Local 6, I.L.W.U., and specifically for violating the Oath of Obligation, the Preamble, the Declaration of Principles,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

and the provisions of Article 9, 'Membership Duties,' of the Constitution:

"Clyde W. Haynes 0-1280
"Dave Luchsinger 0-1152
"Frank Marshall 0-757
"Sanford Moreau 0-1921
"Harry A. Smith 0-790

"We also charge the above-named members of the Union with the following specific violations of our Constitution and our Union policies, as adopted by majority vote of the membership:

"1. Attacking and violating the no-discrimination policy of the I.L.W.U.

"2. Using their positions as Stewards to spread false and misleading information among the membership concerning the policies and program of the Union, the activities and position of the Union officers, the status of the Union treasury and the status of the contract between the Union and Colgate-Palmolive-Peet Company.

"3. Encouraging non-payment of dues and non-attendance at Union meetings by members whom they were responsible to check and keep in good standing.

"4. Failure and refusal to honestly represent the grievances of members employed by the Company.

"5. Refusal to post bulletins and official notices submitted to them by the Union officers

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

in conformity with regular Union procedure and with actions taken by the Union membership.

"6. Conspiring with enemies of the I.L.W.U. and of the labor movement to destroy the Union."

Mr. Grube: Brother Heide, I move at this time that the Secretary read off the charges. I think we will get a clearer understanding of the procedure.

Mr. Larrabee: Will you read this off? (Indicating document)

Chairman Wilson: Is there any objection?

Mr. Grube: It is simply to be read, and no action to be put at this time.

Miss Stanley: You don't want me to re-read this first one, do you?

Mr. Grube: No. I think we have a fair understanding of that.

Miss Stanley (To the Reporter): My name is Emma Stanley. I am the Office Secretary.

"We, the undersigned, members of Warehouse Union, Local 6, I.L.W.U., hereby bring charges against the following members of the Union for violations of the Constitution of Warehouse Union, Local 6, I.L.W.U., and specifically for violating the Oath of Obligation, the Preamble, the Declaration of Principles,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

and the provisions of Article 9, 'Membership Duties,' of the Constitution:

"H. Lonnberg 0-1900

"Lincoln Olsen 0-1941

"Ed Thompson 0-1982

"William Sherman 0-788

"We also charge the above named members of the Union with the following specific violations of our Constitution and our Union policies, as adopted by majority vote of the membership:

"1. Attacking and violating the no-discrimination policy of the I.L.W.U.

"2. Deliberately spreading false and misleading information among the Union membership concerning the policies and program of the I.L.W.U., the activities and the position of the Union officers, the status of the Union treasury and the status of the contract between the Union and Colgate, Palmolive-Peet Company.

"3. Conspiring with enemies of the labor movement to weaken and destroy the I.L.W.U.

"4. Leading a movement for non-payment of dues and non-attendance at Union meetings among the membership at Colgate, Palmolive-Peet Company.

"5. Making libelous and defamatory statements concerning other members of the Union.

"6. Promoting and leading a strike at the

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

Colgate, Palmolive-Peet Company in open violation of the Union's no-strike pledge."

These charges have been signed by Louis Gonick, Charles Duarte, George Canete, Lauro Cortez, Jim Nelson, Joe Gomes, Charles Murray and David A. Wilson.

Chairman Wilson: Mr. Prosecutor, will you proceed with your case?

Mr. Heide: Mr. Chairman, I think it would be proper at this time for the Chair to ask if any of the Defendants are present, that they submit their plea at this time, whether guilty or not guilty, and then I will proceed.

Chairman Wilson: Are any of the Defendants present? (No response)

It seems as if not any of them are present.

Mr. Heide: Mr. Chairman, in connection with the Defendants' failure to appear, I would like to point out that Section 11 of Article 15 of the Constitution of Warehouse Union, Local 6 provides as follows:

> "If the accused fails to appear for trial without an excuse which satisfies the Trial Committee, such failure to appear may be considered by the Committee as conclusive proof of guilt."

Mr. Chairman, I would now like to submit Exhibit No. 1 for the prosecution, which is the original signed copy of the charges against Clyde W. Haynes,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

Dave Luchsinger, Frank Marshall, Sanford Moreau and Harry Smith, and submit as Prosecution's Exhibit No. 2 the signed copy of the charges, which have already been read, against H. Lonnberg, Lincoln Olsen, Ed Thompson and William Sherman.

I offer as Prosecution's Exhibit No. 3 an affidavit showing that notices of this trial and copies of the charges were served on all of the Defendants.

Exhibit No. 3 reads as follows:

"State of California,

County of Alameda—ss.

"Emma Stanley, being first duly sworn, deposes and says:

"I am a person over the age of twenty-one years and am an employee of Warehouse Union, Local 6, I.L.W.U. On September 20, 1945, I served upon Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau, and Harry A. Smith, H. Lonnberg, Lincoln Olsen, Ed Thompson and William Sherman, and each of them, by sending to each of these said persons by registered mail, postage fully prepaid, the original of the letters annexed hereto and hereby made a part hereof, addressed to each of such persons, respectively, at the respective addresses stated therein. The letters to Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau and Harry A. Smith each contained a copy of the Charges annexed hereto and hereby made a part hereof, marked Ex-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

hibit 'A.' The letters to H. Lonnberg, Lincoln Olsen, Ed Thompson and William Sherman each contained a copy of the Charges annexed hereto and hereby made a part hereof, marked Exhibit 'B.' Attached to each of said letters, except the letter to William Sherman, and hereby made a part hereof, are the return delivery receipts for said letters and Charges which I received from the United States Post Office, Oakland, California. Attached hereto and hereby made a part hereof, marked Exhibit 'C,' is the letter to William Sherman, which was returned by the United States Post Office by reason of the fact that said William Sherman refused to accept delivery of said letter. The address set forth is the true and correct address of said William Sherman as shown for him on the Union books and he was residing there at the time he refused to accept delivery of the said letter.

"Subscribed and Sworn to Before Me This 3rd Day of October, 1945.

/s/ "EMMA STANLEY.

/s/ "J. B. MORRISON,

"Notary Public in and for the County of Alameda, State of California."

Chairman Wilson: Is there any objection? (No

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

response). If not, the exhibits may be received in evidence.

(Copy of Charges against Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau and Harry A. Smith was received in evidence and marked Plaintiff's Exhibit No. 1.)

(Copy of Charges against H. Lonnberg, Lincoln Olsen, Ed Thompson, and William Sherman was received in evidence and marked Plaintiff's Exhibit No. 2.)

(Affidavit of Emma Stanley and attached documents were received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Heide: Mr. Chairman, I would like to call as the first witness for the prosecution, Charles Duarte.

CHARLES DUARTE

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name and position with the Union?

A. Charles Duarte, Business Agent, Oakland Unit, Local 6, ILWU, Book No. 0-817.

Q. Do you know Clyde W. Haynes, Dave Luch-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

singer, Frank Marshall, Sanford Moreau and Harry Smith, who are Defendants in this case?

A. I do.

Q. Who are they?

A. They were formerly the Stewards at the Colgate-Palmolive-Peet Company.

Q. Are you familiar with their activities as Shop Stewards at that plant? A. I am.

Q. Did they always work together as one group, that is, collectively? A. They did.

Q. Are you familiar with the grievance of a Negro Union brother at Peet's, named Harrison?

A. I was involved in the Carlyle Harrison case at the time Brother Harrison was discharged from his job for coming in a few minutes late, I believe it was on a Saturday.

Q. Will you just answer the question "Yes" or "No?" A. Yes.

Q. Are you familiar with that case?

A. I am.

Q. Will you state what occurred in connection with the handling of the grievance?

A. Brother Harrison came to me and stated that the Stewards at Colgate-Palmolive-Peet's had not taken his case to a final conclusion. I immediately went out to Colgate-Palmolive-Peet's and discussed it with the various Stewards, the Stewards named here. I was told by Marshall that the reason he did not want to take the beef up was because he did

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

not like Harrison, and Harrison did not like him. The rest of the Stewards took the same position, that they did not want to take the case any further. I then immediately came back to my office and filed a grievance slip, which is a notification to appear before the Grievance Committee. I charged them on the Grievance Committee slip with conduct unbecoming stewards. They attended the next Grievance Committee meeting, at which time the whole case was threshed out, and were reprimanded by the Grievance Committee for their actions.

Following this we had a meeting with the Employer, the Union taking the position that the man was unjustly discharged, the Company taking the position that he was justly discharged, and the next step was to be arbitration.

In the interim between the meeting of the Grievance Committee and the question of going to arbitration, which, under our organization, means we must first get approval of the Executive Board, Brother Harrison then went to work as a longshoremen in ILWU, Local 10, and informed me that he did not want to take his case any further.

Q. About what date did this incident occur?

A. This occurred in '44, I think prior to that——

Mr. Grube: A point of information.

A. (Continuing): I think it was some time the latter part of '44.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

Mr. Grube: Brother Heide, a point of information.

Chairman Wilson: Just a moment, Brother.

A. (Continuing): I may be wrong. It might have been the first part of '45.

Q. (By Mr. Heide): Is it correct that this incident you referred to was in March or April of 1944? A. That is about right.

Q. Preceding an annual House Meeting of the Colgate-Palmolive-Peet Company employees?

A. I would say that is correct.

Q. Do you recall a grievance in connection with penalty time?

A. There had been some discussion at Peet's, and a series of letters I believe had been written between our office, the Stewards and our attorneys, regarding penalty time. I went out and sat in a Grievance Committee meeting that the Stewards held every Monday with the Employers, and took the position that under the contract the section (which I cannot name) provided that anyone that worked over five hours without a meal was entitled to penalty time, meaning time and a half or the straight time overtime rate, such as the case may be.

At this meeting it was decided that a check should be made of the employees who considered themselves eligible for this penalty time. I made the suggestion at the meeting that one of the Stewards contact the employees in the particular de-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

partments, and that we would get these claims and submit them to the Company, and the Company would pay the valid claims, and if there were any claims, if there was any question about it, the Union would take them into the grievance machinery and settle them in that manner.

Q. In both of these cases, these two incidents or grievances you have testified to, were the Stewards involved the Stewards that were previously named, who are Defendants in this trial——

A. Yes, they were.

Q. ——at the time that these grievances arose?

A. Right. I just wanted to add one thing.

At this meeting, the Secretary of the Grievance or Bargaining Committee, which consisted of these five Stewards, was Harry Smith, and at this meeting he took it upon himself, on this recommendation that I made, to get this survey so that we could file a claim for our penalty time, because the Company took the position that anyone who had a valid claim and was entitled to their penalty time would be paid, but that because of the fact that there was some confusion regarding who was entitled to it, that everybody was going to make a claim that they would just as soon take the valid cases, pay them, and we could discuss the others. Smith took it upon himself to say that he would follow it up, and to my knowledge, to this day, that survey has never been made, and that survey has never been

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

brought to the attention of the Company and to my knowledge no one has ever been paid the penalty time that they have coming.

Q. Do you recall the occasion in March or April of 1945 when the issue of collecting contributions for the Harry Bridges deportation case came up in the Union? A. I do.

Q. Will you state what happened in connection with that matter?

A. The Union membership unanimously went on record to support the Bridges case, something that they have been doing ever since the first Bridges case.

Previous to this Union meeting, the Stewards Council, representing all of the Stewards, representing all of our people in the various houses, took the same position.

The Chairman of the Stewards Council, at the time this motion was passed, was Frank Marshall, one of the Defendants. There was no opposition, at the Stewards Council meeting, no opposition on the floor of the Union meeting. The collections were based on a voluntary basis, where members could give anything from $1 to $50 or $100, or give nothing. All of the Stewards became active in participating in the Bridges defense, with one shining example of non-cooperation, Colgate-Palmolive-Peet.

The Stewards collected at Peet's—I think Mar-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

shall collected $21 in toto. None of the other Stewards collected a nickel, it was claimed, or it might have been put in as all the Stewards collected under Marshall.

But, in order to get the drive moving, it became necessary to go out and investigate, and find out what was being done, and we found that the Stewards were actually sabotaging it by refusing to discuss it with anyone, or refusing to attempt to collect any money for the Bridges defense.

The officers sat down and discussed the question, and the people at Peet's who in the past had supported all of the Bridges trials and had supported the Bridges defense fund then set up a committee out there and Brother Bopp, who was not on the Stewards Committee as such, collected $70, which was an indication to us that the Stewards had not even attempted to carry out the policy as enunciated by the membership or by the Stewards Council, of which Marshall was Chairman. There were other brothers who collected a total of about $38 to $40.

This, in the light of the fact that the Stewards as a whole collected $21, comprising five people, and three other people collected a total of over $100, brought to our attention the fact that these people were not cooperating and were not going along with Union policy, and when I say "policy" in this instance I mean the mandate of the membership that

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

the Bridges Defense Committee should be supported unanimously.

Q. Do you recall an occasion in September of 1944 when the matter of contributions to the National Citizens Political Action Committee came up in the Union? A. I do.

Q. Will you tell what the Stewards at Colgate-Palmolive-Peet did in regard to that matter?

A. The story is practically identical. Marshall, who was still the Chairman of the Stewards Council, sat in with the Stewards Council, and unanimously recommended the voluntary contributions that were put out in receipt form for the National PAC, National Citizens Political Action Committee. These were booklets, were triplicate receipts for donations for members of our Union donating from fifty cents to any sum up to, I believe, $10,000, where the Smith-Connally Act prevented any more. We did not get any $10,000 donations.

The Stewards as a group, or the Stewards Council as a group took it upon themselves to act as collectors for this particular campaign, this campaign being the elections in '44, the Roosevelt election, the Stewards as a whole took it upon themselves to be collectors in this particular campaign.

The same story occurred again, where the Stewards refused to cooperate, refused to contact any of the people on the job, although our people at Peet's were 99 per cent behind the Political Action drive

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

or the program of the Administration, and were willing and ready to support PAC in electing to Congress those representatives best fitted to represent the workers.

The same thing occurred again, where it was necessary for the officials to contact rank and filers on the job in order to get the message down to the people and to make the collections as such.

Mr. Heide: Mr. Chairman, the next question I want to ask concerns a provision of the contract now in effect between this Union and Colgate-Palmolive-Peet Company. I do not have a copy of that contract here. If we could have just a moment, the Secretary has gone to get the contract.

(Short recess.)

Q. (By Mr. Heide): I have here a copy of the contract with the Colgate-Palmolive-Peet Company. I call your attention to Section 10 in the contract. That sections calls for the setting up of Department Stewards, doesn't it? A. That's correct.

Q. What if anything did the Stewards do about that particular contract provision?

A. Nothing. Normally—to be very technical about it—the Union, through the Stewards, or the Stewards at Palmolive-Peet technically were violating the agreement, because the agreement, under Section 10, "Adjustment Committee," the first paragraph reads:

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

"The employer agrees to recognize the Union system of Department Stewards as the spokesmen and representatives of the employees in the departments from which they are elected."

I was not in on the beginning of this hierarchy of five Stewards representing the entire plant, but it was raised by myself a few times with the Stewards on the question of representation for departments, and the answer that I received was that it was too awkward to have stewards from each department taking up grievances, and that they as a group were Chief Stewards. In reality there were five Chief Stewards.

I made the comparison at the time between this particular contract and the contracts that we have at Palmolive-Peet, Durkees, or any of the big warehouses or industrial plants where we have anywhere from ten to twenty Department Stewards, and from that group of Stewards an Adjustment Committee or a Grievance Committee is elected to represent all of them, thereby giving everyone in the plant an opportunity to air his grievances to his own particular Steward.

They thought this was wrong, that it could not be done.

To further go on with this, I attended a House Meeting in June of last year, at which time a motion was made that all Stewards be elected automatically,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

the five Stewards. There was some argument about it. The motion was defeated and they were nominated separately and elected as the five Stewards representing all of the workers in that particular plant.

Q. The same section of the contract, Section 10, sets up certain machinery for the adjustment of grievances. Do you know whether the Stewards that are defendants in this case utilize that machinery?

A. No. I don't think so, because I know for a fact that there are grievances, or have been grievances that were not satisfactorily reached or concluded, for the reason that they did not follow out the particular contract.

In Paragraph 3 of Section 10 it states:

> "If the Department Steward is unable to reach a satisfactory settlement with the foremen, he shall report the matter to one of the Chief Stewards, who in turn will take the matter up with the Superintendent or other authority designated by the Employer. If the Chief Steward does not reach a satisfactory settlement of the grievance, it shall be turned over to the Adjustment Committee for settlement. In case the Employer shall employ an industrial labor relations manager, he shall be consulted in lieu of the Superintendent."

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

It was impossible, practically impossible for the five Stewards, or so-called "Chief Stewards," to follow out the letter of the agreement, because no Department Steward was ever consulted, for the simple reason there were no Department Stewards who could take the arguments in. They met in meetings with the Employer, they sat down, concluding nothing, and I made the statement at one of the meetings that I would refuse to attend a meeting of a committee consisting of five Stewards who were supposed to adjust grievances, where they did not adjust grievances.

The contract as such was never followed out under Section 10 providing for Department Stewards, and the procedure for taking up of grievances and the steps into arbitration, if necessary, if they could not be settled by the Adjustment Committee.

Q. Section 10 also calls for the selection of a Chief Stewards. Did the Stewards at Peet's ever do anything about that?

A. No. The reason for it was, I believe, that none of the five Stewards wanted to trust any of the others, and they simply stated that, "We are all Stewards. We are all Chief Stewards. There will be no one Chief Steward, and we will all be called in on all grievances."

Q. What sort of judgment did the Defendant Stewards use in taking up grievances? That is, did

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

they present many phony beefs? Can you give any examples of the type of grievances that were taken up?

A. Well, there were many—what we call "phony grievances", grievances that had no place before the Management, that could have been settled within the department itself, grievances relative to the question of how many men were working on the job, that could have been settled in consultation with the departments or the people within the departments.

The only comparison I can make, as an official of the Union, is to make a comparison of what happens in some of our other houses where Department Stewards within the department settle the petty grievances within that department, and the Chief Steward in any of these houses is only called in as a last resort before calling in a Business Agent, if he cannot settle the problem.

They went through a whole series of double talk at these meetings, that resulted in nothing concrete for the benefit of the workers involved.

Q. Brother Duarte, you are familiar with the Constitution of Warehouse Union, Local 6?

A. I am.

Q. Does that Constitution provide a means whereby officials of the Union can be brought up on charges of misconduct? A. It does.

A. Did any of the nine Defendants in this case,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Duarte.)

to your knowledge, ever bring charges under the Union Constitution against any official of this Union?

A. None of the Defendants ever brought charges, written charges under the Constitution as provided for, or ever brought verbal charges. By that I mean, ever took the floor at a Union meeting in charging the officers with malfeasance of office, et cetera. They had a right, under our Constitution, to bring written charges, and had the God given right to get up on the floor of our Union meeting and point out, if they had any charges to make, point out the actions of the officers before the entire membership. Neither one of these steps were taken by any one of these Defendants.

Mr. Heide: That is all the questions of this witness.

Chairman Wilson: That is all the questions?

(Witness excused.)

Chairman Wilson: Mr. Heide, will you call your next witness?

Mr. Heide: Pardon?

Chairman Wilson: Will you call your next witness?

Mr. Heide: If there are no questions of the witness from the defense (and I assume there is none), the defense not being here represented, I will call as the next witness Louis Gonick.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

LOUIS GONICK

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name, your book number and your position with the Union?

A. My name is Louis Gonick, Book No. 0-2343, Business Agent for the Warehouse Union.

Q. Do you know Haynes, Luchsinger, Marshall, Moreau and Smith, former Stewards at Peet's?

A. I do.

Q. How did you come to know them?

A. I came to know them in my capacity as Business Agent, taking up grievances in negotiations with the Company.

Q. Calling your attention to the last of May and the first of June of 1945, did you ask the Stewards to arrange for a meeting of the employees at Peet's?

A. I did.

Q. What was the purpose of the meeting?

A. Well, the purpose of the meeting was to elect new Stewards, or at least to have an election of Stewards to discuss the contract and the negotiations which were there in progress, and to take up any grievances that were in the plant, that usually come out at a House Meeting.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

Q. On how many different occasions did you ask the Stewards to arrange for such a meeting?

A. I asked them on three different occasions.

Q. What did they ever do about your request?

A. They did not do anything. As a matter of fact, they prevented the Union from calling a meeting. On the first occasion—that was the latter part of May, I approached the Stewards and called their attention to the fact that a House Meeting was due, the last House Meeting having been held about a year before. They asked me what we needed a House Meeting for, and I told them for the reasons I have described, for discussion of negotiations and grievances and election of Stewards. They did not warm up to the idea at all, particularly Marshall and Smith and Haynes, and they stated that there was no need to have a meeting, there were no grievances, everybody was happy and there would be no purpose served in calling a House Meeting.

I called their attention to the fact that the Company had made certain offers in connection with negotiations, and they stated there too that it would not be necessary to have a House Meeting for that, to gain the approval of the membership. All that was necessary was to go around to the various individuals involved, say on the shift differentials, and the women's pay, and ask them if they approved.

I told them that this was no way—that in a matter of this sort the whole house has to have a dis-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

cussion on it, and either accept or reject the proposals, and Marshall told me that that was unnecessary, that the men would be satisfied with anything that they got, and there was no need to discuss it any further.

However, I still persisted and stated we should have a House Meeting, and they said, "Well, we will discuss it further."

Q. Did you ever furnish the Stewards with a notice of meeting, and ask them to post it?

A. Yes, I did that, too.

Q. What did they do about it?

A. Well, they never posted it, but, preceding that meeting, that is about two weeks after my first approach to them, I asked them again whether they had thought the thing over, and whether they would have a meeting, and they said, "Well, maybe."

So, I asked them again. I asked them whether they would get the hall, rent the hall and make all the arrangements. They said that they would.

About two weeks later I came back again. I said, "Have you made the arrangements?" They informed me that they had forgotten all about it.

So, at that point I informed them that I would make the arrangements—that the Union would make the arrangements themselves, and asked them what they thought would be a satisfactory time to have a meeting.

So, they informed me that it would be impossible

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

to have a meeting without three weeks' notice. I thought this was rather strange, because we frequently call House Meetings on 48-hour notice. They told me that it would take at least three weeks to inform the members in the plant about a meeting. However, the arrangements were made to rent the hall on University Avenue, the Finnish Hall, and a notice was given them for posting.

I asked them whether they would post the notices. They said they would. I gave the notices to Marshall. Two of the other Stewards were present. I went around in the plant, came back again and asked each Steward, I said, "You know you have your notices for a meeting. You will see that they are posted."

They informed me that they would see that they were posted.

The notices were never posted.

Q. Calling your attention to July 30 of 1945, did the Stewards call a meeting on that date?

A. A meeting was called—that is Monday, isn't it? There was a meeting called for another group that was organizing.

Q. Let me ask you this question. If I understand your answer, a meeting was called by the Stewards, is that correct, on that day, and if so, was that meeting authorized by the Union?

A. No, there was no—there was a meeting called that was not authorized by the Union.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

Q. Did the Stewards post notices of that meeting? A. Yes, they did.

Q. I hand you a paper and ask you if this is one of the notices posted.

A. (After examining): Yes. That is the notice.

Mr. Heide: I would like to introduce this as the Prosecution's Exhibit No. 4.

Chairman Wilson: It will be received.

(Copy of notice of meeting was received in evidence and marked Plaintiff's Exhibit No. 4.)

The Witness: In connection with this notice, this notice was posted on Saturday afternoon, calling for a meeting, I believe on Monday, which was far less than the three weeks that it was necessary to notify members.

Q. (By Mr. Heide): In other words, it did not require three weeks in this case to notify the employees in advance of a meeting?

A. That's correct.

Q. Do you recall when the Stewards Council meetings were changed and the Stewards Council was amalgamated with the Executive Board and became the Executive Council of the Union?

A. I recall the occasion. I don't recall the exact date at the moment.

Q. Were Stewards under a duty to attend those meetings? A. They were.

Q. That is, either of the Stewards Council or the Executive Council, as it is now constituted?

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gomick.)

A. That's correct.

Q. Did the Stewards at Peet's, the former Stewards at Peet's who are Defendants in this case attend the meetings of the Executive Council?

A. At the beginning Marshall attended, and Smith. Marshall was elected as the Chairman, and Smith as the Secretary. They went to one or two meetings, and then they failed to come any more.

Q. Was their attendance necessary to the efficient and proper discharge of their duties as Stewards?

A. Yes, it was. The Stewards Council meeting is the one place where the Stewards get together with the Executive Board, discuss and determine policies and provide means for carrying them out. Unless they attend the Stewards Council meetings, they are in effect divorced from the Union and the Union policy, to a large degree, particularly with these Stewards who neither attended the Council meetings or the membership meetings.

Q. When you refer to these Stewards Council meetings, you mean the combined meetings of the Executive Board and Stewards Council, which is called in the Union the "Executive Council"?

A. That's correct.

Q. What was the practice of the former Stewards at Peet's in regards to attending general membership meetings of the Union?

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

A. Well, none of the Stewards or—pardon me, will you repeat that question again?

Q. What was the practice of the Stewards at Peet's who are Defendants in this case in regard to attending the general membership meetings of the Local Union?

A. All the Stewards but one have not been to a membership meeting for many months. They had obtained excuses for themselves for not attending these meetings. Of course, they were authorized also to issue excuses to others. However, they themselves did not go, with the exception of one.

Q. Are you familiar with a grievance that came up at the Colgate-Palmolive Company plant involving a Negro member of the Union named Ulysses Norman, and a white member named Andy Nigro? A. I am.

Q. Did the Defendants, Frank Marshall and William Sherman, have anything to do with that particular case? A. They did.

Q. What was their part in that case?

A. Well, I will have to outline the whole thing, more or less.

In 19—at least, this last year, a Negro member was in the dressing room at Peet's when another member came in, a white member, and he stated in the presence of this Negro that, "There are too many Negroes in the Union, and the quicker we get them out of here the better"

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

He did not say "Negro." He said a more derogatory term, and he used other expressions.

The Negro member cited him—cited the white member before the Grievance Committee for having violated the no-discrimination pledge. Frank Marshall and Sherman came to the Grievance Committee to defend the white member, whose name I believe was——

Q. I stated the name. Ulysses Norman was the Negro member. The white member's name was Andy Nigro.

A. Yes. And, their contention there was, when they stated in most positive terms that they had a right to use any language they wanted to, that saying a thing did not constitute discrimination; an overt act was necessary. They brought out Webster's Dictionary to prove that "discrimination" means some overt act, that one could say anything one pleased, no matter what the consequences of that language were.

Q. I ask you, was there a Union rule adopted by vote of the membership that anyone found guilty of expressing race hatred or prejudice because of race, color, creed, sex or political opinion would be subject to a fine not less than $25?

A. That's correct, and it was brought out on the Union floor many, many times.

Q. When this case was discussed at the Union meeting, the Defendants, Sherman and Marshall,

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

also spoke and took approximately the same position they had in the meeting of the Grievance Committee?

A. They took the same position, yes.

Q. You mentioned William Sherman. Was he formerly an officer of this Union?

A. He was.

Q. What position did he hold?

A. Business Agent.

Q. Can you fix any time or occasion after which he commenced to work against the interests of the Union?

A. Well, I would fix January of 1944 as that time. That is when he was defeated for office.

Q. Will you state in your own words what activities or part he took that served to undermine the Union?

A. Well, this is one example of it. I can cite other examples.

They were along the line that the Stewards were taking, refusal to come to the Executive Board meetings after he was elected, certain statements that he made in the General Executive Board which led one to believe that he was an oppositionist, opposing the Union program, because it was enunciated by officials that he did not like. Many of the concrete things, of course, came out later, when we discovered that he was more or less the brain work behind the opposition group at Peet's.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Louis Gonick.)

Mr. Heide: That is all the questions of this witness.

Chairman Wilson: You may be excused.

(Witness excused.)

Chairman Wilson: Will you call your next witness?

Mr. Heide: The next witness I want to call is Hack Gleichman.

HACK GLEICHMAN

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name, book number and your position with the Union?

A. The last name is Gleichman, G-l-e-i-c-h-m-a-n; Hack, H-a-c-k. Book No. 0-3499. Field Representative, Local 6, Oakland Division.

Q. Are you acquainted with the products manufactured by the Colgate-Palmolive-Peet Company plant in Berkeley? A. I am.

Q. Were they engaged in the manufacture of any war materials on or about the 1st day of August, 1945? A. Yes, they were.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Hack Gleichman.)

Q. What were those materials?

A. Glycerine.

Q. Did a stoppage of work occur at the plant on or about August 1st? A. It did.

Q. To what extent, if any, was the production of war materials affected by that walkout?

A. Well, I couldn't say exactly how many thousands of gallons of glycerine, but I know it was materially affected, because the Navy was beginning to squawk about the situation.

Q. It stopped the manufacture of glycerine at the plant? A. Glycerine, yes.

Q. How long did this stoppage last?

A. About three days.

Q. Was the walkout authorized by Warehouse Union, Local 6? A. It was not.

Q. What was the policy of Warehouse Union, Local 6 in regard to strikes or stoppages in wartime?

A. Local 6 had a No-Strike pledge which had never been broken during the entire war period.

Q. Did you make any investigation as to who were the leaders in that unauthorized strike?

A. Well, in my work I was in a position to know who was.

Q. Can you name those leaders?

A. Sherman, Lonnberg, Olsen and one more.

Q. You say one more?

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Hack Gleichman.)

A. There were four that I know of in that situation.

Q. Was the other one that you refer to the Defendant Thompson?

A. Thompson, that's correct.

Q. Were you acquainted with the former Stewards, Haynes, Luchsinger, Marshall, Moreau and Smith? A. I was.

Q. What was their attitude with reference to the Union's program of political action?

A. Well, they were not very enthusiastic about it, because in my activities with them, whenever we asked them to take some concrete step for developing the policy, whether it be on maintaining the price ceilings under OPA or breaking the Little Steel Formula, or going for an increase in wages across the Board, which was our position at the time, they just would not participate.

Q. Do you recall an occasion when the Union asked the Stewards to circulate petitions in the plant for repeal of the Little Steel Formula and for a 20 per cent wage increase?

A. Yes. As a matter of fact, around the time—a couple of weeks before this notice of their special meeting was put up, I remember telling them about this program, because they were talking about improving conditions around there, and I pointed out that our problem was a similar problem to those of our workers all over the area and throughout the

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Hack Gleichman.)

country, and that what we were trying to do was to break the Little Steel Formula first, then, through the War Labor Board, we would be able to get more money for our people, and as a result of that discussion I said that I would mail to each one of them a few petitions which had just been put out by the National CIO, and that I would mail them to their homes so that they could get them as quickly as possible, and that when I came out there in a few days from then, I would pick them up. Each one I think contained—had room for around twenty signatures. That would mean each one could get about sixty, which would about take care of the plant.

I did that, and when I went back there a few days later, not one of them had done a thing about it. As a matter of fact, one of them, Moreau, said that he thought that this was not what we were supposed to do, that what we were going to do was go for more money, and I explained to him that you could not go for any more money unless you broke the Little Steel Formula, and the attitude of the rest was just that—was just that it was unimportant, so they either left the letters home or tore them up, or something. Petitions, rather; not letters.

Q. Did the former Stewards ever oppose the Union's program in regards to the OPA?

A. Well, their attitude on OPA was right along the same lines of their attitude toward Little

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Hack Gleichman.)

Steel, breaking the Little Steel Formula, expressed at that time that I spoke to them about the petitions. They did not think that the fight that we were making to retain whatever we could of OPA regulations with regard to consumer's goods especially, was anything that we should waste too much time about. As a matter of fact, they said—I don't remember just which one of the five said it—but it was stated that, "Political action is all right, but we do too much of it."

Q. I show you seven papers here, entitled "Progress Report", bearing the dates of August 7, August 13, August 31, September 5, September 8, September 12 and September 15, and ask you if you can identify them.

A. (After examining): I can. These are reports put out by the spokesmen for the AFL Chemical Workers.

Q. The Defendants in this case?

A. Yes. They were taking the leadership in this activity.

Mr. Heide: Mr. Chairman, I would like to introduce these as evidence in this case, as the Prosecution's Exhibits 5A, 5B, 5C, 5D, 5E, 5F and 5G.

Chairman Wilson: Is there any objection? (No response.)

If not, the exhibits may be received in evidence.

(Copies of Progressive Reports dated respectively August 7, 1945, August 13, 1945, August

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Hack Gleichman.)

31, 1945, September 5, 1945, September 8, 1945, September 12, 1945 and September 15, 1945 were received in evidence and marked Plaintiff's Exhibits 5A through 5G respectively.)

Mr. Heide: That is all the questions of this witness.

(Witness excused.)

Mr. Heide: I would like to call now Chuck Grube.

CHARLES GRUBE

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name and occupation, and your book number?

A. My name is Charles Grube, G-r-u-b-e, Book No. 9-1869, classified as a Foreman at Colgate-Palmolive-Peet.

Q. Are you acquainted with the strike that took place at Peet's during the first part of August?

A. Yes, sir.

Q. What effect did the strike have on the Company's production of materials for the Armed Forces?

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Grube.)

A. Well, they kind of cut it down during the war. We was down to zero during the war. We had that war contract to put out, and they lost glycerine that was vital to war products. I say practically a week—we lost practically a week. I can't say a week, but we lost—we had to work overtime to make it up.

Q. You lost considerable production as a result of the strike?

A. That's right, on dynamite glycerine.

Q. Do you know who the ringleaders of this strike were? A. Yes, sir.

Q. Will you name them?

A. Yes, sir. Miller, Sherman, Ed Thompson, Linc Olsen, Frank Marshall, and that is all. That's the ringleaders. They coerced the rest of them into doing it.

Q. Did you attend the rump meeting that was called at the Finnish Brotherhood Hall on July 30, 1945? A. I did.

Q. Who were the leading figures at that meeting?

A. Ed Thompson, Linc Olsen, Harold Lonnberg, Bob Ashworth. They was the ringleaders.

Q. Sherman?

A. Sherman was the chairman.

Q. Sherman was the chairman of that meeting?

A. That's right.

Q. Were any charges of misconduct against offi-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Grube.)

cials of Warehouse Union, Local 6 made at that meeting?

A. There wasn't—there was—yes, misconduct, but it was mostly stealing was brought up at that time. That comes under misconduct.

Q. Who made the charges?

A. Bill Sherman and Ed Thompson.

Q. What were they?

A. That Heide took money from the PAC and put it in his own pocket for traveling expenses.

Q. When you say "PAC", what do you mean?

A. P.A.C. [37]

Q. What else?

A. What else? Well, they were going to raise the dues in order to make more money for the CIO. The CIO was practically broke, and they was going to raise the dues, and CIO was stealing from one pocket—in other words, Paul was stealing from Paul to pay Simon, or whatever it is. They was just taking from one pocket in the other, to make it up, and we hadn't had a financial statement for the last four months.

Q. Were there any discriminatory statements made concerning the officials or other members of the Union, regarding their political affiliations?

A. Yes. It was claimed that there was no more "Communism" in this Local, that it was "Heideism," that Communism was a thing of the past, and now it was "Heideism", that Sherman was Busi-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles Grube.)

ness Agent of this Local, and that Heide was squawking in the office, and beating down Sherman's throat, that he should listen to his way of thinking. There was no more Communism; it was all "Heideism" from now on. Heide was the big shot.

Q. Was anything said about racketeering on the part of Union officials?

A. Right. They said that you—I mean, Paul Heide, "Chilly" Duarte, was racketeering. Paul Heide was running this Union for his own advantage.

Mr. Heide: That is all the questions of this witness.

Chairman Wilson: Are there any objections? (No response.)

If not, the witness may be excused.

(Witness excused.)

Mr. Heide: The next witness is Charles Leacock.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

CHARLES W. LEACOCK

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name and your Union——

A. Charles L. Leacock.

Q. ——Union Book number?

A. Union Book No. 0-126.

Q. And your occupation?

A. Maintenance man.

Q. At Colgate-Palmolive-Peet Company?

A. Yes.

Q. Calling your attention to the walkout which occurred at the plant on or about August 1st of this year, were you present the day of that walkout?

A. Yes, I was.

Q. Did you hear anyone agitating for a strike on that day, or prior to the day the strike occurred?

A. Prior to the day of the strike.

Q. Who was it? A. Ed Thompson.

Q. Anyone else?

A. And Marshall, Luchsinger, and "Monroe"—or, Moreau; that's his name.

Q. Stanford Moreau? A. Yes.

Q. Were you present at the rump meeting which

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles W. Leacock.)

was called on July 30, 1945, at the Finnish Hall in Berkeley? A. Yes.

Q. Did you hear anyone in that meeting attacking officials of this Union?

A. Absolutely.

Q. Will you state in your own words what was said, as you recall it, and who said it?

A. Sherman was the Chairman, and Mr. Thompson at the time was the spokesman, relieved by Mr. Lonnberg, who stated that the "Heideism" of Local 1-6 was in progress. They accused officials and executives of this Union as racketeers and looting the treasury of Local 1-6. And, I sat there and listened.

Q. Did you hear any "Red-baiting", or remarks about the political affiliations of any of the officials or members of the Union? A. Yes, I did.

Q. Will you state what you heard?

A. In the discussion of the Union that afternoon, which personally I didn't get heads or tails of it, becaues from what I, in my own common knowledge, never had anything to work on, they couldn't finish the sentence, and the gentleman got so exhausted that he had to call for some help, and the officials of this organization and the action of the operation of this Union was hit from stem to stern. In other words, you were doing everything but the right thing.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Charles W. Leacock.)

Mr. Heide: That is all the questions I have of this witness.

Chairman Wilson: That is all.

(Witness excused.)

Mr. Heide: I would like to call Pauline Goulart.

PAULINE GOULART

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Heide:

Q. Will you state your name and Union Book number?

A. Pauline Goulart, G-o-u-l-a-r-t, O-W177, and I am a machine operator at Colgate-Palmolive-Peet.

Q. Calling your attention to the walkout that has been referred to in previous testimony, which occurred on or about the 1st day of August, were you present on the day of that walkout?

A. I was.

Q. Did you hear anyone urging the employees to walk out?

A. Yes. I was operating one of the machines, and Ed Thompson came over to the machines on the whole unit, and told us to shut off our machines.

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

(Testimony of Pauline Goulart.)

He just said, "Shut down those machines." He told us that they were having a meeting.

Mr. Heide: That is all.

(Witness excused.)

Mr. Heide: Mr. Chairman, I would like to ask for a recess of five minutes at this time.

Chairman Wilson: If there is no objection, we will recess for five minutes.

(Short recess.)

Chairman Wilson: Come to order, please. We will proceed with the case.

Mr. Prosecutor, do you have any more witnesses?

Mr. Heide: Mr. Chairman, I would like to take this opportunity to point out that we called a number of witnesses, but I do not wish to call them at this time. I think that the case is complete. I would just like to say that we thank them for being present here, and we are sorry that they were troubled to come down here.

We will not call any more witnesses.

Chairman Wilson: Does anybody wish to say anything on behalf of the Defendants? If so, they will have the right to have the floor. (No response)

Mr. Silas Hansen: Mr. Chairman, it strikes me as though the Defendants, the same as any other defendants, have a right to be heard. How we are going to do it, I don't know. However, it looks as though they don't want to be heard. If the ma-

Intervener's Exhibit No. 8—Proceedings Before Warehouse Union—(Con't)

jority considers it advisable to again attempt to get them together, I think it should be done. However, that might not be the consensus of opinion. That is my personal feeling, that they should be heard, but it is quite obvious that they don't want to be heard.

I think that is about all I can say on that.

Chairman Wilson: Does anyone else have anything to say? (No response)

We will take the case under advisement. Our decision will be presented at the next regular membership meeting, as provided in the Constitution.

At this time I will bring this meetng to a close. The case is now closed.

(Whereupon at 4:00 P.M., Wednesday, October 3, 1945, the hearing in the above-entitled matter was closed.)

INTERVENER'S EXHIBIT No. 9

Before: Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union

In the Matter of

WAREHOUSE UNION, LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, CIO,

Plaintiff,

vs.

MANUEL ALEGRE, TERRY ANDERSON, ROBERT ASHWORTH, TOMMY AZEVEDO, VINCENT BARBONI, ANN CERRATO, FELIX DENKOWSKI, HENRY GIANNARELLI, HENRY HELLBAUM, MARTIN HEPPLER, GLEN HIXON, WILLIAM HOWARD, ALDEN LEE, MANUAL MUNOZ, KAY NORRIS, INA PAIGE, K. PERIERA, JOHN PERUCCA, MIKE RAMIEREZ, CALIXTO RIGO, OPHELIA REYES, F. L. RICHMOND, ROSE ROS, MANUEL SOUZA, NICK TATE, GENEVIEVE YOUNG, ALBERT ZULAICA,

Defendants.

Green Room, Warehouse Union, Local 6, 158 Grand Avenue, Oakland, California

December 17, 1945. 8:30 P.M.

Before Trial Committee:
P. Lind, Chairman.
M. Pavalini.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Joe Quartarola.

J. Silva.

M. Frietas.

Appearances: On Behalf of the Plaintiff: Charles Duarte, Business Agent, Warehouse Union, Local 6, 158 Grand Avenue, Oakland, California.

Present: Ray Heide, International Representative, International Longshoremen's & Warehousemen's Union.

Emma Stanley, Office Secretary, Warehouse Union, Local 6, I.L.W.U., CIO.

PROCEEDINGS

The Chairman: As the Chairman for the Trial Committee, I will now call the meeting to order.

The first thing we will have to do is to appoint a Sergeant-at-Arms. I will ask Fred Fields to take over.

Will Miss Stanley please act as Clerk for the Trial Committee?

Miss Stanley: Yes, I will.

Mr. Anderson: Mr. Chairman, may I have a word before you get into the trial?

There are some of us here who don't want to stand trial under the present charges. We have prepared a statement which Kay Norris is going to read. There are some of us who want to stand trial tonight. So, those of you who want to stand trial can remain, but after the statement is read, those who don't want to stand trial may leave.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Duarte: Mr. Chairman, my name is Charles Duarte, acting as Prosecutor in this case.

I would like to suggest that the people who have a statement to make wait until that order of business which provides for a plea, and at that time have the statement read, with the names of the people that, I suppose, are signed to it. I think that would be the appropriate time to present the statement as such.

Mr. Howard: We want an opportunity to read it before the trial starts.

The Chairman: We will now proceed.

The Clerk will read the Bill of Particulars given to the defendants.

The Clerk: This represents a Bill of Particulars sent to the following people:

Manuel Alegre	Kay Norris
Terry Anderson	Ina Paige
Robert Ashworth	K. Periera
Tommy Azevedo	John Perucca
Vincent Barboni	Mike Ramierez
Ann Cerrato	Calixto Rigo
Felix Denkowski	Ophelia Reyes
Henry Giannarelli	F. L. Richmond
Henry Hellbaum	Rose Ros
Martin Heppler	Manuel Souza
Glen Hixon	Nick Tate
William Howard	Geneviève Young
Alden Lee	Albert Zulaica
Manuel Munoz	

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

This is dated December 3rd. It reads:

"You are hereby informed that the trial on the charges filed against you, of which you have already been notified, will be held on Monday, December 17, 1945, at 8:00 P.M., in the Green Room at 158 Grand Avenue, Oakland, California.

"In accordance with the request of several of the defendants for a Bill of Particulars, we have consulted the members who filed the charges and hereby advise you that the sole issue at the trial will be your alleged participation in an unauthorized strike in wartime, contrary to the I.L.W.U.'s No-Strike pledge.

"If you wish to plead guilty to this charge and waive trial, you may sign the enclosed 'Plea of Guilty and Waiver of Trial.' Under the heading 'Reasons for exercising leniency in my case' you may state any reasons which you think excuse or lessen your offense. This information will be taken into consideration by the Trial Committee in determining your case. The enclosed stamped, self-addressed envelope may be used in returning the plea."

It is signed by Paul Heide, Vice-President.

Attached to this letter is a "Plea of Guilty and Waiver of Trial," which says:

"Receipt is acknowledged of a copy of the charges filed against me under the constitution

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

and by-laws of Warehouse Union, Local 6, I.L.W.U. I hereby waive trial upon each and all of the said charges and enter a plea of Guilty to the charge of having engaged in an unauthorized strike in wartime, contrary to the I.L.W.U.'s No-Strike pledge. I hereby submit myself to the verdict of the Trial Committee and request that it exercise leniency in my behalf."

Then there is a place for the date and the signature, and "Reasons for Exercising Leniency" in the case of whoever signed the letter.

The Chairman: You have all heard the Bill of Particulars.

I will ask the Clerk to call the names of the Defendants. When your name is called, you will answer "Present," and then state whether you are guilty or not guilty.

The Clerk: Manuel Alegre.

Mr. Alegre: Not Guilty.

The Clerk: Terry Anderson.

Mr. Anderson: Not Guilty.

The Clerk: Robert Ashworth.

Mr. Ashworth: Not Guilty.

The Clerk: Tommy Azevedo.

Mr. Azevedo: Not Guilty.

The Clerk: Vincent Barboni.

Mr. Barboni: Not Guilty.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

The Clerk: Ann Cerrato.
Miss Cerrato: Not Guilty.
The Clerk: Felix Denkowski.
Mr. Denkowski: Not Guilty.
The Clerk: Henry Giannarelli.
Mr. Giannarelli: Not Guilty.
The Clerk: Henry Hellbaum.
Mr. Hellbaum: Present. Not Guilty.
The Clerk: Martin Heppler.
Mr. Heppler: Not Guilty.
The Clerk: Glen Hixon.
Mr. Hixon: Not Guilty.
The Clerk: William Howard.
Mr. Howard: Not Guilty.
The Clerk: Alden Lee.
Mr. Lee: Not Guilty.
The Clerk: Manuel Munoz.
Mr. Munoz: Not Guilty.
The Clerk: Kay Norris.
Miss Norris: Not Guilty.
The Clerk: Ina Paige.
Miss Paige: Not Guilty.
The Clerk: K. Periera.
Mr. Periera: Not Guilty.
The Clerk: John Perucca.
Mr. Perucca: Not Guilty.
The Clerk: Mike Ramierez.
Mr. Ramierez: Not Guilty.
The Clerk: Calixto Rigo.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Rigo: Not Guilty.

The Clerk: Ophelia Reyes.

Miss Reyes: Not Guilty.

The Clerk: F. L. Richmond.

Mr. Richmond: Not Guilty.

The Clerk: Rose Ros.

Miss Ros: Not Guilty.

The Clerk: Manuel Souza.

Mr. Souza: Not Guilty.

The Clerk: Nick Tate.

Mr. Tate: Not Guilty.

The Clerk: Genevieve Young.

Miss Young: Not Guilty.

The Clerk: Albert Zulaica.

Mr. Zulaica: Not Guilty.

The Chairman: I want to inform all of the Defendants that they have a right to be represented at this trial by a member of this Union, and only by a member of this Union. If you have such a representative, please state his name and book number for the record.

Do you have anybody you want to represent you at this trial?

Mr. Anderson: We can't understand you.

Voices: No. No. Explain yourself.

The Chairman: I want to inform all of the Defendants that they have a right to be represented at this trial by a member of this Union, and only by a member of this Union.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Miss Norris: We cannot understand him.

Mr. Howard: You have a right to be defended by a member of the CIO, if you will state his name and book number.

Miss Norris: I can't understand him.

Mr. Duarte: Mr. Chairman, may I ask that the Court Reporter read back the statement that the Chairman made?

(Record read.)

Miss Norris: Thank you.

The Chairman: The Prosecutor will now proceed with the case.

Mr. Howard: Mr. Chairman, may we present our statement now? We are all through with the business part of this trial, I guess.

Mr. Duarte: We have no objection.

The Chairman: It is up to the Prosecutor to call for the first witness.

Mr. Duarte: We have no objection to your introducing a statement, if you wish to do so, on behalf of some of the people.

Miss Norris: "We are appearing here only for the purpose of protesting against and taking exception to the trial of whatever charges may have been preferred for the following reasons:

"1. We have never received a copy of the charges, if any, upon which this trial is to be held, as required by Section 7, Article XV of the Constitution and By-Laws. The first so-called notice sent

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

out consisted only of a letter from the vice-president, stating that charges had been filed. No copy of the charges was enclosed.

"The next so-called notice was again a letter from the vice-president, which likewise did not enclose a copy of any charges. The only reference to the nature of any charges contained in the second letter was a paragraph which stated the nature of the 'issue' as a matter entirely different from that indicated in the previous letter. The second letter, likewise, failed to specify the Section of the Constitution, Declaration of Principles, or By-Laws alleged to have been violated. Not having seen the charges, we are unable to state whether the charges specify the Section alleged to have been violated. They are, therefore, invalid and void since they do not comply with Section 4, Article XV, of the Constitution and By-Laws.

"2. We understand, and so state, that Section 6, Article XV of the Constitution and By-Laws, requiring a Trial Committee to be selected at the next regular meeting following the filing of the charges, has not been complied with.

"3. We maintain that these proceedings are wholly illegal and void for the further reason that they were not instituted, and are not being carried through, in good faith and are unfair and prejudicial, in that only a few of the men who could be made the subject of similar alleged charges have

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

been called to stand trial, and that this attempted trial is not in fact one upon the charges alleged to have been filed, but is being called for some other and unspecified reason, namely, to unfairly and illegally discriminate against and persecute certain members of this union who have acted no differently than the great majority of the other members of the union.

"4. We hereby request that a copy of whatever charges may have been filed be sent to the accused, as required by the Constitution and By-Laws, that the trial thereon be held no sooner than ten days after the charges are mailed, that all the other provisions of the Constitution and By-Laws having reference to these matters be complied with, and that the trial, if any, to be held on such charges be held in good faith, that all members who were guilty of the acts complained of be charged and brought to trial, and that discrimination, prejudice, undemocratic dictatorship and illegality be eliminated from these proceedings.

"Until this is done, we protest against and take exception to the holding of a trial, and we decline and refuse to stand trial."

Mr. Howard: For those of you who don't want to stand trial, don't think you should stand trial, I think we can be excused now, and those who want to remain for the trial may remain.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Duarte: I would just like to ask one question, if I might.

I would like to know the people that introduced this. I note that in the statement it says "I am," and then, in parentheses, "(we are)."

What was the Sister's name? Kay what?

The Clerk: Norris.

Mr. Duarte: Kay Norris.

I would like to know whether Kay Norris was speaking for herself or for anyone else, because she read the statement in the plural sense when she said "we are." There is no signature attached to the document.

Miss Norris: Well, "Chile," I think it was for all of us. I believe it is for all of us. I was just asked to read it. I believe it is for all of us.

Mr. Howard: There are some of us who don't want to stand trial. If anyone here wants to stand trial, that is their own business, not mine. But, I for one am going to wait for further charges. I don't think I should discuss that any more right now.

Mr. Duarte: Mr. Chairman, the Prosecution will prove that charges were sent, return receipts were received, and the Constitution lived up to. If the people who have not signed this statement do not wish to stand trial, they have the right to say they will not stand trial. But, I want to point out that

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

under the Constitution, refusal to stand trial under Section 11 of Article XV reads:

> "If the accused fails to appear for trial without an excuse that satisfies the Trial Committee, such failure to appear may be considered by the Committee as a conclusive proof of guilt."

That is the end of Section 11.

Mr. Howard: We have appeared, but we do not mean to stand trial, "Chile."

Mr. Anderson: We have appeared.

Mr. Duarte: If there is no objection, Mr. Chairman, we will proceed with the trial.

Miss Norris: I would like to hear what you people have to say, but yet I don't feel that I want to stand this trial, because I am not guilty. I don't feel that I am.

Mr. Duarte: I want to make two points, Mr. Chairman, (1) that Sister Norris, who just spoke, made a statement that appears in the record, and (2) the last paragraph of the statement reads: "Until this is done, I protest against and take exception to the holding of a trial, and I decline and refuse to stand trial."

I cannot for the life of me imagine anyone making a statement, saying "I refuse to stand trial," and acting as spokesman for a group of people who leave, while the person that read the statement remains.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

I suggest that if the Sister does not wish to stand trial, the Sister be excused.

(Whereupon, certain of the Defendants left the room.)

Mr. Ashworth: I came down because I don't feel that I am guilty of the charges filed against me, and I would like to stand trial, myself. That is what I came for.

Mr. Duarte: Mr. Chairman, I want the record to show that an unsigned statement was read by Defendant Kay Norris, and that, following the statement, certain verbal statements were made.

I want to emphasize once again for the record that the statement introduced is not signed by anyone who left the meeting.

The Chairman: I believe it will be best for us to take a roll call of the people remaining.

The Clerk: Would you stand up and give your name?

Mr. Heppler: Martin Heppler.

Mr. Hixon: Glen Hixon.

Mr. Azevedo: Tommy Azevedo,

Mr. Zulaica: Albert Zulaica.

Mr. Souza: Manuel Souza.

Mr. Periera: K. Periera.

Mr. Ashworth: Robert Ashworth.

Mr. Denkowski: Felix Denkowski.

Mr. Barboni: Vincent Barboni.

Mr. Rigo: Calixto Rigo.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Lee: Alden Lee.

Mr. Perucca: John Perucca.

Mr. Munoz: Manuel Munoz.

Miss Cerrato: Ann Cerrato.

Miss Ros: Rose Ros.

Miss Paige: Ina Paige.

Mr. Tate: Nick Tate.

The Chairman: Would you people mind moving up closer? It is easier for everybody to understand. The Prosecutor will now call the first witness.

Mr. Duarte: I will call Emma Stanley.

EMMA STANLEY

called as a witness by and on behalf of the Plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Duarte:

Q. Give your name.

A. Emma Stanley, E-m-m-a S-t-a-n-l-e-y.

Q. How old are you? A. 35.

Q. What is your occupation?

A. Office worker.

Q. Where do you work?

A. Warehouse Union, Local 6, I.L.W.U., Oakland Division.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Emma Stanley.)

Q. Did you mail the original charges that were sent to the 26 people who are defendants here?

A. Yes, I did.

Q. Do you recognize this list of names?

A. Yes, I do.

Q. When did you mail them?

A. I have the records here. May I refer to them? (After consulting documents) August 30th and September 1st. There were two different dates on those letters.

Q. How did you mail them?

A. By registered mail.

Q. To whom did you mail them?

A. To the parties involved, suspended members.

Q. Will you read off their names?

A. Yes. Henry Hellbaum, Calixto Rigo, Tommy Azevedo, Manuel Munoz, Robert Ashworth.

Mr. Ashworth: The first charges I got was through a registered letter. They mailed all the rest of them, I believe, to the wrong address. The first one I got was last week, and I went to the Post Office and picked it up.

The Witness: I have the returns.

A. (Continuing) Nick Tate, Manuel Souza, Bill Howard, Felix Denkowski, Manuel Alegre, K. Periera, Vincent Barboni, Glen Hixon, Alden Lee, Ross Ros, Albert Zulaica, Terry Anderson, Genevieve Young, Ina M. Paige, Kay Norris, Ann

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Emma Stanley.)

Cerrato, Henry Giannarelli, Ophelia Reyes, Martin Heppler, F. L. Richmond.

Q. Did you receive return receipts?

A. Yes, I did.

Q. From whom?

A. May I say that—every one with the exception of three.

Q. Will you name the exceptions?

A. Albert Zulaica, Robert Ashworth and Henry Hellbaum.

Q. Did you also mail out the Bills of Particulars? A. Yes, I did.

Q. When? A. December 3rd.

Q. How did you mail them?

A. Registered mail.

Q. To whom?

A. Manuel Alegre, Terry Anderson, Robert Ashworth, Tommy Azevedo, Vincent Barboni, Ann Cerrato, Felix Denkowski, Henry Giannarelli, Henry Hellbaum, Martin Heppler, Glen Hixon, William Howard, Alden Ivee, Manuel Munoz, Kay Norris, Ina Paige, K. Periera, John Perucca, Mike Ramierez, Calixto Rigo, Ophelia Reyes, F. L. Richmond, Rose Ros, Manuel Souza, Nick Tate, Genieve Young, Albert Zulaica.

Q. Did you receive return receipts for these?

A. Yes, I did.

Q. From whom?

A. I will have to read them. Kay Norris, K.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Emma Stanley.)

Periera, Thomas Azevedo, Manuel Munoz, Nick Tate, Felix Denkowski, Vincent Barboni.

There is one I can't read.

Ina M. Paige, Alden Lee, Henry Giannarelli, Ann Cerrato, John Perucca, Henry Hellbaum, F. L. Richmond, Manuel Souza, Ophelia Reyes, William Howard, Glen Hixon, Albert Zulaica, Calixto Rigo, Mike Ramierez, Rose Ros, Martin Heppler.

Q. Were there any you did not receive return receipts from?

A. I did not check this. There was a return on this letter from Calixto Rigo, Genevieve Young and Terry Anderson. Calixto Rigo sent a letter with his return. Genevieve Young's was returned. It does not say why.

"Unclaimed." Excuse me.

Q. May I have a copy of the original charges?

A. You are referring to the original ones?

Mr. Duarte: Yes.

(Witness hands documents to counsel.)

Mr. Duarte: Mr. Chairman, as Exhibit A I will introduce the original charges with the return receipts.

The Chairman: They will be received in evidence and marked Exhibit A.

(Copies of original charges and return receipts were received in evidence and marked Exhibit A.)

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Emma Stanley.)

Mr. Duarte: As Exhibit B, the returns from Exhibit A.

The Chairman: They will be received in evidence and marked Exhibit B.

(Returns from Exhibit A were received in evidence and marked Exhibit B.)

Mr. Duarte: As Exhibit C, I offer the Bill of Particulars, with the return receipts.

The Chairman: They will be received in evidence and marked Exhibit C.

(Copies of Bill of Particulars and return receipts were received in evidence and marked Exhibit C.)

Mr. Duarte: As Exhibit D, Mr. Chairman, I want to introduce the returns on Exhibit C.

The Chairman: They will be received in evidence and marked Exhibit D.

(Returns from Exhibit C were received in evidence and marked Exhibit D.)

Q. (By Mr. Duarte): I want you to identify these letters. You typed these particular letters?

A. Yes.

Q. Will you tell the Committee the reason for this letter, and read one of them, please?

A. Well, I don't know about the reason, but I will gladly read the letter.

The letter is addressed to Mr. Calixto Rigo and Mr. Manuel Alegre.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Emma Stanley.)

"Correcting the Bill of Particulars furnished you by letter dated December 3, 1945, you are hereby notified that the sole issue in your trial will be your fomenting and encouraging a wartime strike at Colgate-Palmolive-Peet Company in violation of the I.L.W.U.'s No-Strike pledge."

It is signed by Paul Heide, Vice President.

Mr. Duarte: I should like to introduce these as Exhibit E, the letters and return receipts.

The Chairman: They will be received in evidence and marked Exhibit E.

(Copies of letters to Manuel Alegre and Calixto Rigo, dated December 13, 1945, were received in evidence and marked Exhibit E.)

Mr. Duarte: That is all.

(Witness excused.)

Mr. Duarte: I will call Louis Gonick.

LOUIS GONICK

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

Direct Examination

By Mr. Duarte:

Q. State your name, please.

A. My name is Louis Gonick.

Q. You are an officer of Local 6?

A. Yes. I am the Business Agent for I.L.W.U., Local 6, the Oakland unit.

Q. Are you familiar with the Union's position in regard to strikes in war time?

A. Yes, I am.

Q. What was the position of the Union?

A. The position of the Union was that there would be no strikes during the war for any reason whatsoever. The position further was that we were all out for production to win the war. Penalties were imposed for absenteeism. Any group of workers outside of our Union that went out on strike were severely and publicly censored, because we realized that if any group of workers, particularly in our Union, walked out, it would set a precedent for a great many others in our Union in plants that had accumulated grievances during the war, which had to wait.

Q. What was the record of the Union locally in regard to strikes during the war?

A. The Union locally had a 100 per cent record as far as strikes were concerned, that is, up to the time that Colgate-Palmolive-Peet walked out.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

Q. What was the record of the Union nationally?

A. It was the same. There were no strikes whatsoever. This is the only strike on our record.

Q. I show you a page out of a newspaper, "The Dispatcher," dated July 13, 1945, and ask you if you recognize that as an official newspaper of the I.L.W.U. A. Yes, that is correct.

Q. On that page is a resolution dealing with the war effort. I ask that you read Point 1 in the upper lefthand corner of that particular page.

A. "We therefore resolve:

"(1) That we reaffirm our war time No-Strike pledge. The war in the Pacific comes first. The fighting men must receive their weapons and supplies without stint, without interruption or delays of any kind."

Q. I ask you to read now the section in the center of the page, the statement. Will you read the heading, please?

A. It is headed, "A Pledge to President Harry S. Truman and the Nation."

"On behalf of the entire membership of the International Longshoremen's & Warehousemen's Union, we renew and give to President Harry S. Truman and the Nation our solemn pledge that until the war is ended with the unconditional surrender of Japan we will not strike, stop work, or cease or slow production for any reason whatsoever.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

"We reiterate that this is an unconditional pledge, given in the knowledge that our first duty is to our Nation and that, despite provocation, we must take no action that will imperil our Nation or cause the prolongation of the war or cause the unnecesary loss of so much as one Allied life.

"We further make the positive pledge that we will do everything in our power to shorten the war by lending ourselves to intelligent solution of the manifold manpower problems and to the development of all possible means to speed production."

This was adopted unanimously on June 29, 1945, by the I.L.W.U. Executive Board.

Q. Following the meeting of the International Executive Board, was a Resolution No. 1, headed "War Effort," concurred in by the Oakland unit of Local 6?

A. That's correct. It was, on more than one occasion.

Q. Did a strike take place at Colgate-Palmolive-Peet on August 1, 1945? A. Yes, it did.

Q. How long did it last?

A. Approximately three days.

Q. Was that strike authorized by the Union?

A. It was not.

Q. Did the Union attempt to get the strikers back to work?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

A. Yes, they did. On the day of the strike we publicized a meeting outside of the gate, at which some of the people that were on strike attended, and after that meeting they returned back to work.

We also attempted to get the people on strike to come to our meeting, to come to the hall and explain their position so we could try to influence them. None of them showed up.

At their own meetings we attempted to ain admittance by sending our Local President to the meeting, and also the International Secretary-Treasurer. They were not permitted entrance into the meeting, and they were kept outside.

The Conciliation Department also was in on the scene and informed us that they, too, tried to get admittance, but were not permitted into the meeting.

Q. Were there any war materials then being produced at Peet's? A. Yes.

Q. What were they? A. Glycerine.

Q. Was the production of this glycerine interrupted by the strike?

A. The glycerine plant was completely shut down. The glycerine went out to the war effort.

Q. Did the United States Army and Navy interfere in any way?

A. They were in on the picture, and called the Union to try to get a settlement of the strike.

Q. Do you mean by "settlement," get the people back to work?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

A. Get the people back to work, that's right.

Q. Was the Union notified that there was going to be a strike at Peet's? A. No.

Q. When the strike was called, did anyone notify the Union that a strike had been called?

A. No, there was no notification whatsoever.

Mr. Duarte: Mr. Chairman, I would like to introduce in evidence page 8 of "The Dispatcher," the official newspaper of the International Longshoremen's & Warehousemen's Union, as Exhibit F.

The Chairman: It will be received in evidence and marked Exhibit F.

(Copy of page referred to from "The Dispatcher," dated July 13, 1945, was received in evidence and marked Exhibit F.)

Mr. Duarte: Are there any questions?

The Chairman: I wonder if this group of people from Palmolive-Peet have somebody they want to select as chairman for the defense of their own case?

Does anyone want to come up and cross examine the witness?

Mr. Heppler: I would like to ask him a question.

Cross Examination

By Mr. Heppler:

Q. How many, approximately, went out on that strike?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

Mr. Duarte: Mr. Chairman, I object to this.

Mr. Heppler: I just wanted to ask a question.

Mr. Duarte: The objection I raise is that if we are going to call witnesses—and I intend to call a few—and each individual person here rises to ask questions, we will be here until next Wednesday sometime, or adjourn and meet nightly.

I would suggest that one person represent the group and ask any questions and conduct any cross examination you see fit.

Mr. Lenkowski: I don't want to ask anyone any questions, but you made a statement that is not correct.

Mr. Duarte: I want to raise an objection again, Mr. Chairman. The group should get someone to represent them. I don't want it to seem that I am trying to cut anybody off. I have no objection to anybody asking questions if there is no cross fire. Under those circumstances, I have no objection to anyone asking any particular question.

The Chairman: That is all right.

Mr. Heppler: I would like to ask a question.

Q. (By Mr. Heppler): Approximately how many went out on this strike?

A. Oh, I don't know the exact number. I imagine it was well over half the plant.

Mr. Souza: 223.

Mr. Perucca: I would like to ask a question.

Q. (By Mr. Perrucca): I was told that there

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

was another strike or work stoppage during the war in a dried fruit plant up in San Jose, to win a point of some kind. Is that true? I think Lynden called them out, or something like that. Is that right?

A. I don't know. I believe that was after hostilities had ceased.

Mr. Perucca: I don't remember the date, but I was told that work was called off during the war up there, to win a certain point of some kind.

The Chairman: Does anyone else want to ask any questions?

Q. (By Mr. Denkowski): You said we went on strike for three days. Did we go on strike for three days?

A. Well, as I recall it, approximately three days. It may have been two and a half days, or between two and a half and three.

Mr. Denkowski: Well, it couldn't be three, because I was called—I didn't know a thing about it—I was called at 11:00 o'clock, and the foreman told me to shut down, because I was blowing soap—to shut down at noon, when we went out at noon, so it must be two and a half days.

The Witness: Well, it may have been two and a half days. I said approximately three days. I remember there were three days in which the workers had walked out. I imagine that even after they

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

came back it took a certain number of hours to start things going, and start the glycerine plant going.

Mr. Denkowski: Well, the glycerine plant was going right along.

Mr. Duarte: Mr. Chairman, I object to this running dialogue that goes on. I think a question should be asked, because we could go on and ask Gonick a million questions, and build something up.

Mr. Frietas: Brother Chairman, may I ask this question?

Why did these people go out on strike? That is what I want to know.

Mr. Ashworth: Brother Chairman, can I speak for myself?

Mr. Frietas: Go ahead.

Mr. Ashworth: I think the biggest majority of the kids sitting here, including myself, didn't understand just what it was all about. The meeting was called. I think approximately 300 people attended that meeting. I, for one, got up on the floor. I told the kids, "Go back to work."

For two days, I think, we were out, and we all went back. Maybe a few stayed out. I wouldn't say that every one of them went back.

Then the kids in my department wanted me as a temporary Shop Steward. The other one was off the job. I think Mr. Gonick here can verify my statement. Once there isn't a Shop Steward in some of those departments, they kind of go haywire.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

While I am talking, I might say something else. For a year and a half around there, when we held meetings with the Company, there used to be a bulletin of the minutes put on the board at all times. Every member of our Union could go around and read them, see what the meeting was about.

I will have to make this statement, that for the last year and a half out there, there haven't been any bulletins on the board. No one knew what the meetings were about, what they were called for. If you came out there, the only time we knew you were there was when you came out to collect dues, and we handed them to you.

Mr. Duarte: Mr. Chairman, I want to make one objection here, the same objection I will keep making.

The issue before the Committee is not, Why? but, "Was there a strike?" That is what we are trying to prove. Was there or was there not a strike?

Mr. Ashworth: That is what I am asking. You interrupted there, but I will start over again.

That went on for a year and a half. I don't think any of the kids sitting in here actually knew what the score was. Maybe there was a few them, but they was yanked off their jobs here, including myself. I am sure I did not know what the score was, or what it was for. But, I do know that when anything come up, and we asked for a Business Agent to come out there, we was told—I won't mention

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

any names—me, for one, I know I was told a half a dozen times that the Business Agent wasn't in, couldn't be gotten ahold of.

Mr. Duarte: Mr. Chairman, I want to object again on the basis that this kind of discussion relates to the proof that was given in another trial that was held. Those records can be examined by the Committee. The thing we have before us here is not, What was wrong at Peet's? The issue we have here is whether or not these people went on strike. They are charged with going on strike. Period. That is all. Now, did they or did they not walk out on strike? That is the only question we have to discuss here.

The Chairman: That is right.

Mr. Ashworth: Brother Chairman, may I suggest something?

If we are charged with walking out on strike, how about the other 200 that walked out at the same time?

Mr. Duarte: I want to make a point again, Mr. Chairman, that these people are charged with going out on strike.

Mr. Frietas: During the war.

Mr. Duarte: During the war. If three people, three distinct people, murder their grandmother, and two of them are charged with murder and the third is not, that does not give the two the right to

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

say, "I am not guilty because you are not trying a third man."

What we have here to determine is whether or not these people were implicated in a strike. I will keep saying that that is the only charge against them, and that is the only charge we have here.

I think the answer would be, whether or not these people went out on strike. I will object to anyone getting up and making long statements about the history of negotiations, or anything else. I think we should have an answer on whether or not there was a strike at Peet's, and whether or not they went out on strike at Peet's for two and a half days.

Mr. Ashworth: Brother Duarte, I believe I am going to answer the question you just asked, for myself, personally. If that is what you call "walking out on a strike," yes, I attended the meeting personally, myself. I did. But, I did go back to work at the same time the rest of them did, and I never went off the job afterwards. I tried to see that everything went on just as it had been for years. In fact, I helped organize the place in the first place, so I understood the Union very well as far as keeping things in line. I did not do anything against the contract at Colgate's.

As far as trying to be a temporary Shop Steward, if any of the kids had any beef, I went to the boss with it and seen that they stood up to the I.L.W.U. contract; not any other.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

I was yanked off the job one morning when I come in to work thirty, thirty-five days later, handed my suspension papers, and that is all I knew. That is all I have to say.

Mr. Azevedo: His question was, Why did we go out on a strike at Colgate-Palmolive-Peet's?

Is that right?

Mr. Duarte: The question I asked, and I will ask the Chairman to make a ruling on it, is:

Did you or did you not go on strike?

Mr. Azevedo: The question was, Why did we go out on a strike?

Mr. Duarte: I say again, that question, that was asked by a member of the Board, is out of order, because we are here to determine, Was there a strike at Palmolive-Peet's? Did the people here who are defendants walk out on that strike? Were they involved in that strike? That is the question we have to decide here. That is the only question we are here to decide. That is the only charge the people have against them.

I ask the Chairman to make a ruling that the discussion be confined to, Was there a strike? Were these people involved in a strike?

The Chairman: Very well. I make that ruling. Everything that comes up from now on has to pertain to whether you went out on a strike or you did not.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Louis Gonick.)

Are there any more that want to question the witness on the stand?

Mr. Perucca: There is a fellow here who was on a vacation at that time.

Mr. Rigo: I wasn't on the job when the strike took place. I was ten days away. I only read about the strike in the papers. When I came back the strike was over. The strike was called the first of August.

Mr. Duarte: What day did you go on your vacation?

Mr. Rigo: July 23rd.

The Clerk: He might refer to Exhibit E.

Mr. Duarte: It is covered under Exhibit E.

The Clerk: I would like to present this to you.

In the case of these two names, the charges were changed.

Mr. Duarte: Before we go into this, if you are through with Louis, we can excuse him, and then have each one of the people here present their arguments, if they like.

Are there any more questions anyone wants to ask Louis?

(No response.)

(Witness excused.)

Mr. Duarte: Everybody will have a chance to speak their piece.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Under Exhibit E, the letter states:

"Correcting the Bill of Particulars furnished you by letter dated December 3, 1945, you are hereby notified that the sole issue in your trial will be your fomenting and encouraging a war time strike at Colgate Palm-Olive Peet Company in violation of the I.L.W.U.'s No-Strike pledge."

The same applies to Manuel Alegre.

Mr. Rigo: I have worked at Peet's for eighteen years, and I have not heard at all about a strike going on there. They never talked about the strike at all. I believe when these people went out for meetings, as they say, it was because the officials of the Union pulled out those nine men. That is the only reason. Therefore, I don't see how I could promote or encourage a strike.

Mr. Duarte: I would like to suggest, Mr. Chairman, that any of the Defendants that want to take the stand can do so on their own, but I would like to call a couple of more witnesses now.

I would like to suggest, as an order of procedure, that I be allowed to call the witnesses, and then any of the Defendants that wish to take the stand and make a statement on their own behalf, or correct any of the things that the witnesses may state, they will then be given the right to do that. I think that will be an orderly procedure. I will

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

present the witnesses for the prosecution, and then allow any and all of the Defendants to take the stand here and make a statement in their own behalf.

At this time I would like to call Brother Hack Gleichman.

HACK GLEICHMAN

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: Hack Gleichman, G-l-e-i-c-h-m-a-n, H-a-c-k, Field Representative of Local 6.

Q. (By Mr. Duarte): Your book number?

A. 0-3499.

Q. I would like to ask you, Brother Gleichman, as a Field Representative of Local 6, what are your duties?

A. My duties are to assist the Business Agent in whatever work is necessary for me to keep the day to day work running smoothly, to work with the Shop Stewards in the various plants and to carry out the program of the Union generally.

Q. Were you working in that capacity on or about August 1st? A. I was.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

Q. Did a stoppage of work or a strike occur at Colgate Palm-Olive Peet's on August 1st?

A. It did.

Q. Can you tell us what you know of that particular situation that day, what time the strike occurred, how many people were involved, et cetera?

A. Well, as I recall, those that went out on strike did not return after the lunch hour on that date.

Q. Did you attend a meeting at 4:00 o'clock on Saturday at the gates of the Palm-Olive Peet Company? A. I did.

Q. Did you speak at that meeting?

A. I spoke at that meeting.

Q. Did any of the people who walked out at noon that day go back to work the following day?

A. Yes, they did.

Q. Did you see any of the Defendants go out on strike that day, or urge any of the workers to join the strike?

A. Well, I saw all the Defendants in my activities, because I had been working at the plant assisting Brother Gonick for many weeks before that time, because of the new agreement coming up, and various Grievance Committee meetings, et cetera. So, I saw all of the defendants.

Q. Did you discuss the bad feature of striking

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

in war time with any of the people involved, in a group or singly?

A. Well, all through this period I had many discussions with groups and with individuals, and especially several of us—when I say "several of us", I mean some of the Shop Stewards and myself, sometimes together and sometimes separately, would attempt to discourage such brothers as Alegre and Calixto from participating and encouraging this sort of activity.

Q. Do you know Rose Ros? A. I do.

Q. Genevieve Young? A. I do.

Q. Ina Paige? A. I do.

Q. Were they involved in this strike?

A. They were.

Mr. Duarte: That is all.

Miss Paige: May I ask a question now?

Mr. Duarte: Give your name to the Reporter.

Miss Paige: Ina Paige.

Cross Examination

By Miss Paige:

Q. I would just like him to explain how I was suspended, what happened that day down there, if he remembers me, Ina Mae Paige. I am the one who did not have my book when I entered the plant. If he remembers, I would like to have him tell just how it happened.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

A. I do remember, Mr. Chairman, that this was one of the sisters that participated in the strike. She was one of many that we eventually had to keep out for similar activity.

Q. What did I say that day, and why was I kept out? A. I don't remember that.

Miss Paige: I didn't have any book. They told me to return home and get my book, and then I could go to work. I did so, and when I returned they would not let me go in the plant. That is the only thing they could have against me at all. It may be out of order, but I would just like for them to know how that happened. This is the first time I have ever belonged to a union in my life, and that is the treatment I got.

Mr. Duarte: I don't want to make another objection, but everyone will have an opportunity to come up here and speak.

Miss Paige: That is all right, but I wanted to say that, since my name came up.

(Witness excused.)

Mr. Duarte: I would like to call George Squires.

GEORGE SQUIRES

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Duarte:

Q. State your name. A. George Squires.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of George Squires.)

Q. Book number? A. Book No. 0-2768.

Q. Were you employed at Colgate Palm-Olive Peet plant in Berkeley on August 1, 1945?

A. I was.

Q. Did a strike occur on that date?

A. That's right.

Q. Did you see any of the Defendants walk out on strike that day? A. I did.

Q. Did you see any Defendants urge anyone to join the strike? A. I did.

Q. Can you give us their names? I have a list. I will read them off and ask you if you know them. Kay Norris? A. That's correct.

Q. Ann Cerrato? A. Correct.

Q. Henry Giannarelli? A. Correct.

Q. Manuel Souza? A. Correct.

Q. Mike Ramierez? A. Correct.

Q. Martin Heppler? A. Correct.

Q. Bill Howard? A. Correct.

Q. Glen Hixon? A. Correct.

Q. Alden Lee? A. Correct.

Q. Vincent Barboni? A. Correct.

Q. Felix Denkowski? A. Correct.

Q. F. L. Richmond? A. Correct.

Q. Harry Anderson? A. Correct.

Q. John Perucca? A. Correct.

Q. Nick Tate? A. Correct.

Q. Robert Ashworth? A. Correct.

Q. Manuel Munoz? A. Correct.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of George Squires.)

Q. Tommy Azevedo? A. Correct.

Q. Henry Hellbaum? A. Correct.

Q. All of these people, you state, were part of this strike and walked out on strike at that certain hour on August 1st? A. That's correct.

Mr. Perucca: I would like to ask a question there. You asked if he saw us talking somebody else into going out on strike.

Mr. Duarte: I have not asked that question yet.

Mr. Perucca: I thought you asked that question.

Mr. Duarte: I broke it up in two parts. Let me finish questioning the witness, and then we can go into it. We don't want this haranguing, if we can help it.

Q. (By Mr. Duarte): These people I have just named went out on strike that day, left their jobs?

A. Correct.

Q. Did you talk to any group of them or any individual in this particular group? A. No.

Q. Did you see them urging anyone to join the strike?

A. Only one that I know of, and that was in a department I work in.

Q. Who was that? A. Terry Anderson.

Q. In what way?

A. Well, he was intimidating, telling some of the other brothers that they would see how this thing would come out.

Q. Was he asking them to come off the job?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of George Squires.)

A. That's correct.

Q. Was Manuel Alegre or Calixto Rigo involved in this strike?

A. Not to my knowledge.

Q. Were they involved in the strike after the strike took place? I mean, if they were not there that day, did they become a part of the strike?

A. No. They were both on vacations.

Mr. Duarte: That is all.

(Witness excused.)

Mr. Duarte: I will call Chuck Grube.

CHARLES GRUBE

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Duarte:

Q. State your name.

A. Charles Grube. Book No. 0-1869.

Q. Were you employed at Colgate Palm-Olive Peet's on August 1, 1945? A. Yes, I was.

Q. Did a strike occur there?

A. It did.

Q. What time? A. 12:00 o'clock sharp.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Charles Grube.)

Q. Did you see any of the Defendants here leave the job? A. Only one.

Q. Which one is that?

A. Katino Periera.

Q. Did you talk to her?

A. No, I didn't talk to him.

Q. Him, I mean. I am sorry.

Did you see anyone urging anyone to join the strike? A. Not in this group, no.

Q. Did you at any time talk to any of the Defendants here, or those who are not here? Did you at any time talk to any of them after the strike occurred, about coming back to work?

A. No.

Q. Did the Union make an attempt to get these people back to work?

A. They did. They went up on the corners and talked to them.

Mr. Duarte: That is all.

(Witness excused.)

The Chairman: Will the Prosecutor call the next witness?

Mr. Duarte: At this time I would like to bring back the witnesses and ask one question.

I would like to first recall Gleichman, then Grube and Squires.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

HACK GLEICHMAN

recalled as a witness on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Duarte:

Q. To your knowledge, were these Defendants involved in the strike at Peet's?

A. They were.

Mr. Duarte: That is all.

(Witness excused.)

CHARLES GRUBE

recalled as a witness on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Duarte:

Q. To your knowledge, were the Defendants charged here involved in the strike at Peet's?

A. Yes

(Witness excused.)

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

GEORGE SQUIRES

recalled as a witness on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Duarte:

Q. To your knowledge were the Defendants here involved in a strike at Peet's?

A. They were.

(Witness excused.)

Mr. Duarte: I would like to call Charles Leacock.

CHARLES LEACOCK

a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Duarte:

Q. Will you state your name?

A. Charles Leacock.

Q. Your book number? A. 0-216.

Q. Were you employed at Colgate Palm-Olive Peet's on August 1, 1945? A. Yes, sir.

Q. Did a strike take place there?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Charles Leacock,)

A. Yes, sir.

Q. What time? A. 12:00 noon.

Q. Did you see any of the Defendants leave their jobs? A. Yes.

Q. Were the Defendants here present and those not present, to the best of your knowledge, involved in a strike at Peet's? A. Yes, sir.

Q. Did the Union make any attempt to get these people back to work after the strike occurred?

A. They did.

Q. Can you tell us anything about it?

A. Well, in my own words: I went to the meeting that day. I got there around about 12:45. I attended the meeting, and from what I heard, which I was one of them at the time, they wanted to change affiliations. I think it was the next day Local 1-6 representatives came out, and we had a meeting at the plant.

Q. Let me ask you something before you go any further. We are not interested in the question of cause. We are interested in the question of what happened. We want you to start from the time there was a strike.

There have been certain statements made on causes. One statement was made that it was because the Business Agents were not there. The question of causes is not before the Board. It is a question of, Was there a strike or wasn't there a strike?

A. Oh, yes, there was.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Charles Leacock.)

Q. Now, go on from there.

A. The strike lasted two days and one-half. We went back to work after the two days and one-half, after we heard what the executives from the Union had to say. I for one went to the Hall and I tried to urge these people to go back to work. I was interrupted several times, because they did not care to hear what I had to say, and they went on from then.

Q. How long have you worked at Peet's?

A. About four years and a half.

Q. Do you work day shift or night shift?

A. Night shift.

Q. Were any of the Defendants in here on the night shift?

A. Some of them, alternatively.

Q. If a strike occurred at 12:00 o'clock noon, what time does the night shift go to work?

A. On the graveyard, 11:00 o'clock.

Q. Can you explain to me how a man who goes to work at 11:00 o'clock at night becomes a part of a strike that occurs at 12:00 o'clock in the afternoon?

A. Well, in my common language, the only way I can explain that is if he tried to help contribute to the prolonging of that strike.

Mr. Duarte: That is all.

(Witness excused.)

Mr. Duarte: Mr. Chairman, I would like to ask

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

for about a 5-minute recess before we go on, if there is no objection.

The Chairman: We will take a recess of 5 minutes.

(Short recess.)

Mr. Duarte: Mr. Chairman, I would like to apologize for one omission. That was that before I questioned Miss Stanley, she had not been sworn in. If there is no objection, we will stipulate to the fact that she is what she says she is.

The Chairman: Is there any objection?

Voices: No. No objection.

Mr. Hixon: It has been pointed out that we were off work for two and a half days. I think the majority of us here have agreed to that, that we——

The Chairman: Excuse me. Before you go any further, are you one of the Defendants?

Mr. Hixon: Yes. I sure am.

The Chairman: You will have to take the oath, like the rest of them.

Mr. Hixon: I was just getting this thing over in a hurry.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

GLEN HIXON

a witness called on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: We have talked it over amongst us, and it has been pointed out that we participated in this strike, and if that is what you will charge us with, and if it will help things out any more, we will plead guilty on that charge of participating in that strike.

Mr. Perucca: I don't plead guilty to the charges, because according to what Gonick says, he says any group participating in the strike will be censored as a group, and a lot more than 28 people participated in that thing. I will agree that I walked out with the rest of them.

Mr. Silva: Mr. Chairman, if he knows of any other members who walked out on the strike, charges will be filed against them and they will be brought in.

Mr. Perucca: There were 200 of them.

Mr. Duarte: I will object to this, because under the procedure, the people who are here and those that left who stated they would not stand trial, were charged under the Constitution with being in a strike. The brother here states that he was involved in that strike. That is what we are here to prove, whether or not you were involved in a strike.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Glen Hixon.)

The Witness: I agree. The morning we was there, that morning, that is what I would plead guilty to, because I did not take part in agitating the strike, but I will admit I walked off the job with the rest of them, and I am willing to plead guilty, and I think the majority of them—they asked me to speak for them—I think they will plead guilty to the charge.

Mr. Duarte: Mr. Chairman, in order to expedite the proceedings, I would like to have each one take the stand and make a statement as to whether or not they are guilty of this charge or not guilty of the charge.

The Witness: That is all right. I just thought maybe if we could plead as a group, it would just help the thing out.

Mr. Duarte: Are you suggesting that we ask each individual one here whether or not they plead guilty to the one charge as to whether or not they went out on strike? Because, a lot of people have gone.

The Witness: Yes, sir, I do.

Mr. Duarte: And your name is——

The Witness: Glen Hixon.

Mr. Duarte: I would like to suggest that the Clerk read the roll and have each Defendant stand up and state whether or not they will plead guilty to the charge of being involved in this stoppage of work.

The Chairman: We have no objection to that.

(Witness excused.)

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

The Clerk: We already have Mr. Hixon, is that correct?

Mr. Duarte: Yes.

The Clerk: Martin Heppler?

Mr. Heppler: I plead guilty to going out on the two and a half day's strike.

The Clerk: If you don't mind, I only have the last names. Is it all right to do it that way?

Mr. Duarte: Yes.

The Clerk: Azevedo.

Mr. Azevedo: I don't know whether I was guilty or not, because when we walked out I didn't know we were going out on strike. The reason I walked out was, all our Shop Stewards were suspended from the Union, put out of the plant.

Mr. Duarte: I would like to ask this, Tom. The question we have to decide here tonight is whether or not anyone left that job, struck that job at 12:00 o'clock noon on August 1st, and left the job. That is what we are trying to decide here.

Were you or were you not involved in the strike?

Mr. Azevedo: Yes. I walked off the job for a reason.

Mr. Duarte: Do you plead guilty or not guilty to the charge?

Mr. Azevedo: All right. I am guilty.

The Clerk: Zulaica.

Mr. Zulaica: I plead guilty.

The Clerk: Souza.

Mr. Souza: Yes.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

The Clerk: Manuel Souza?

Mr. Souza: Yes.

The Chairman: Guilty or not guilty?

Mr. Souza: Yes. I want to talk about the stooges. Everybody go out and chased the stooges off the jobs. First they call on the members. That is the way they all go out.

The Chairman: The question here is if you are guilty or not guilty.

Mr. Souza: I am guilty.

The Clerk: Ashworth.

Mr. Ashworth: I am guilty.

The Clerk: Denkowski.

Mr. Denkowski: Yes. I walk out, too. Yes, sure, I plead guilty for walking out.

The Clerk: Barboni.

Mr. Barboni: Guilty.

The Clerk: Rigo.

Mr. Rigo: They way it looks to me, I don't see how I can promote or encourage a strike when I——

Mr. Perucca: He wasn't there.

Mr. Rigo: I wasn't there.

Mr. Duarte: He is charged under another charge.

The Clerk: That is right. I am sorry.

Lee.

Mr. Lee: I plead guilty.

The Clerk: Perucca?

Mr. Perucca: Well, I am guilty from about

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

12:00 noon until 8:00 o'clock or 9:00 o'clock the next day.

Mr. Hixon: He was out. That's all there was to it.

The Clerk: Munoz.

Mr. Munoz: Guilty.

The Clerk: Cerrato. Ann Cerrato.

Miss Cerrato: Guilty.

The Clerk: Ros.

Miss Ros: Guilty.

The Clerk: Paige.

Miss Paige: Guilty, I guess. I don't feel that way.

The Clerk: Tate.

Mr. Tate: Guilty.

The Clerk: That is all I have. Is there anybody here that did not plead?

Mr. Duarte: Did we miss anybody's name?

Mr. Periera: K. Periera.

The Clerk: K. Periera.

Mr. Periera: How come that man is down here tonight, when he was up on his vacation at the time of the strike?

Mr. Duarte: The charges against Rigo—Is that the name?

Mr. Rigo: (Nodding affirmatively.)

Mr. Duarte: ——are a question of fomenting and encouraging a strike at Colgate-Palmolive-Peet. Are you guilty or not guilty of that charge?

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Rigo: No, I am not guilty. I can't be.

Mr. Duarte: Very well.

This charge will be taken up, and we will try to prove this brother was engaging in the fomenting of a strike at the Peet plant.

Is that the whole list?

The Clerk: Yes.

Mr. Duarte: There are two separate petitions here. First we have the question of those people engaged in the wartime strike. Second, we have a witness against Brother Rigo.

I suggest that we dispense with the largest group, and that those people who are here who have pleaded guilty to the charge, then——

Is Alegre here?

Voices: No. No, he is not.

Mr. Duarte: He left.

Then I suggest that we take up the question of Brother Rigo. We only have one witness on that particular thing, and the Committee can decide the two issues.

You have one here where a group of workers were involved in a strike, and you have one worker who claims he was not involved in that strike and has other charges against him. So, I suggest we dispense with one and go into the other.

I would like to suggest that if any one member of the group of Defendants wishes to make any

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

statement to wind up this case, I will make a closing statement after they do.

The Chairman: The first thing we should find out is if the case is closed, that is, if either side has presented whatever they want to present. That is one thing. We want to find out if the Defendants or the witnesses have any more to say at this particular time. Otherwise, we will proceed.

Mr. Duarte: Pardon me for interrupting, Mr. Chairman, but we have no other evidence to present, except the case of Brother Rigo, which we will deal with separately. The rest of the cases are closed, as far as the prosecution is concerned.

Mr. Gleichman: Mr. Chairman, may I present my testimony now?

Mr. Duarte: No, not yet.

The Chairman: Do the parties wish to present oral arguments? Do the two parties wish to have discussions between themselves? We will give 15 minutes to each side, if you wish to do that.

Mr. Denkowski: For what, Mr. Chairman?

The Chairman: For whatever you may be interested in. If you want to have a discussion between yourselves, we can give you whatever you want; ten minutes, five minutes or fifteen minutes.

Mr. Souza: We all plead guilty.

Mr. Duarte: If there is no objection, I would like to withdraw my first statement on the basis of handling the Rigo case separately, present that evi-

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

dence now and then wind up the case all at once. If there is no objection to that, we can do it on that basis.

The Chairman: All right. The Chair will rule that we go ahead that way.

Mr. Duarte: Mr. Gleichman.

HACK GLEICHMAN

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Duarte:

Q. Two brothers have been charged under the corrected Bill of Particulars, the letter, Exhibit E, dated December 13, 1945, where Brother Rigo and Brother Alegre are charged with fomenting and encouraging a wartime strike at Colgate-Palmolive-Peet Company. Have you any statement or any evidence in support of these charges?

A. Mr. Chairman, on at least four different occasions I spoke to both brothers, Alegre and Rigo, regarding their activities in talking strike before the strike occurred, regardless of whether they were there when the strike took place or not, because in my job, in working with the Stewards and in working with those that were trying to carry out

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

the program of the Union in this particular plant, I naturally was aware that something was going on, and so I tried to ferret out those individuals who were most active, which I had to do continually from that point on. Both of these brothers were outstanding in their activity prior to the strike, and that, as far as I know, is fomenting a strike.

Mr. Rigo: May I speak on that?

Q. Did they discuss the question of strike with anyone?

Mr. Rigo: May I interrupt that, please?

Mr. Duarte: Wait until I finish, will you?

Q. (By Mr. Duarte): Did they discuss the question of striking against the Union or against the Employer, either one, to your knowledge?

A. Well, the way the thing developed, there was no fine line of demarcation between what kind of strike it was. They were just talking in general terms about striking, and at times they would have an audience of two or three or four, and sometimes they would have an audience of eight or ten. Sometimes I would see it personally, and sometimes I would hear about it and get to it before it was terminated.

Q. Then, in your opinion these discussions of strikes led up to the August 1st incident, where the people walked off the job?

A. Absolutely. They were indulging in what I consider a super-militant attitude on this particu-

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

lar question of getting the people aroused to taking some kind of overt action which, even to me at the time, I didn't know what was going on. It wasn't until the thing hit that I was convinced that this was what they were out to do. They were leaders in it.

Q. Did you discuss this with either one of the brothers, the question of the action?

A. Sure, I discussed it.

Mr. Rigo: No. That is wrong. He did not discuss it.

The Witness: I have taken an oath, Mr. Chairman, and I will say that I discussed it with the brothers, not once but at least four times, to my knowledge, that their activities were detrimental to the smooth running of the operation at Colgate-Palmolive-Peet.

Q. (By Mr. Duarte): Are you referring to Brother Rigo and Brother—— A. Alegre.

Q. ——Alegre. You state that they did foment or were part of or were engaged in discussing the question of strike action? A. I do.

Q. And that this agitation for strike action, in your opinion, fit into the pattern of the August 1st strike? A. That is correct.

Mr. Duarte: That is all.

Do you want to ask him some questions?

Mr. Rigo: Yes.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

Cross-Examination

Mr. Rigo: To tell you the truth, I never see this man until after the strike, after I came back from my vacation. Now, how can I foment or encourage anybody after the strike was done?

The Witness: Mr. Chairman, may I answer that?

The Chairman: Yes, you may answer.

The Witness: All I can say is that I was there from June 18th until right now. As a matter of fact, I was at Peet's today. I am there at least a few times a week. Anybody that has not seen me must be blind. That is all I can say.

Mr. Duarte: That is all the questions I have.

Do you want to ask him any more questions?

Mr. Rigo: Yes.

When was the first time I saw you there? It was when I paid my dues. That was when I came back from my vacation. When I came back from my vacation, that was on the 8th of August, and a week after then you came and collected dues. That is the first time I saw you in there, and I don't see how I can be responsible for encouraging people to go out on that strike.

Mr. Duarte: Let me ask you: What was the first time you met this brother?

The Witness: I would say roughly that the first

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

(Testimony of Hack Gleichman.)

time I warned him was about a week prior to the——

Mr. Rigo: No, it wasn't.

The Witness: ——to the strike.

Mr. Rigo: One week prior to the strike, I wasn't there.

The Witness: Well, a week prior to the action of the strike.

Mr. Rigo: I wasn't there.

Mr. Duarte: That is all.

(Witness excused.)

Mr. Duarte: I would like to make a few remarks, if it is in order, under Point 14. We can go back there, Mr. Chairman, where you stated that each side would have fifteen minutes to close the argument, and that the Prosecution would open and close the argument.

I want to say that the Union charges these defendants, with the exception of Rigo and Alegre, with being engaged in a wartime strike. The evidence presented and the stipulations entered into prove that there was a wartime strike.

This Union has a history of militancy that no other Union in the country can match in terms of fighting for job rights, fighting for wages, and, yes, strikes. This Union has a reputation for conducting and bringing to a successful conclusion strikes. But, this Union took an oath during the

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

war that there would be no strikes and there were no strikes, with the exception of this strike that occurred at Palmolive-Peet.

The Prosecution maintains that the strike at Colgate-Palmolive-Peet was an action that gave this Union, so to speak, a "black eye" in the history of labor. Our record was 100 per cent during the war, and that record would have maintained its 100 per cent stature if this action had not been taken.

I want to emphasize that whether we deal with our membership as committees, or whether we deal with employees, or the International, or the National CIO, when we make a pledge we have a reputation of maintaining that pledge. If it is a fight for wages, we carry it through with the whole support of our entire Union and International Union, and when we made a pledge that there would be no strikes, we made it, not with our tongue in our cheek, but we made it as sincere trade unionists in attempting to win the war.

That has been the position of this Union since Pearl Harbor and before, that there would be no strikes. Even if this program of no strikes did not meet with the approval of a lot of people in and out of labor, we kept that record faithfully until this particular incident came about.

We ask that the Trial Committee fix the proper penalties for the action of the August 1st strike.

That is all I have to say.

The Chairman: In closing, I have this to say,

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

that the Trial Committee, consisting of five members——

Mr. Heide: Just a minute. This is off the record.

(Remarks outside the record.)

The Chairman: Does anybody wish to say something?

Mr. Azevedo: I am still going to insist that the time we walked off the job we did not walk out with the intention of going out on a strike. The reason we walked off that plant was because our Stewards were suspended. After we walked off, we stayed the following day, and they said we were out on strike, but none of us walked out with the intention of going out on strike. There was this question of going out for a little while.

Miss Paige: Absolutely. I feel the same way, because no one is more opposed to a wartime strike than I am, and I don't like to be accused of it.

Mr. Denkowski: I didn't know I was walking out on a strike when the foreman came in at 11:00 o'clock, and I was blowing granulated soap. The foreman comes in and tells me to close. I didn't know a thing about it. The brother just said that none of us attended the meeting, and the brother knows that I did attend the meeting. We were going to elect a Steward. I didn't know a thing about it being a strike. Everybody went, and I went with them. I didn't know a thing about there being a strike. That is all.

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

Mr. Hixon: Of course, we cannot plead our ignorance for all of the 21, I will admit that. But, when we went out there at noon it was with the intention of holding a meeting and coming back, but then, after we got into this meeting we was misled to the extent that they did not want to call it a strike. They wanted to call it a continuous meeting, but, as far as walking off, at the time, if I had thought we was going to participate in a strike, I myself did not know that until we got into this meeting, and then, the rest of them, they just stayed out. But, as far as anybody coming through the plant and telling us, "You are going to a meeting," or "You are going out on strike," if it was told, it wasn't told to me at the time.

Mr. Perucca: I would like to make a little speech. I would like to make a statement that when the Trial Committee arrives at their decision, they take into consideration that there was about 300 of us that went out, instead of just 28, and also I was told by a Union member—I believe he knows what he is talking about—that the dried fruit strike, or work stoppage, whatever you call it, was called during wartime. I would like to have you take that into consideration, too.

Mr. Rigo: If these people go out without the intention of going out on strike, how can I be promoting a strike?

Mr. Duarte: If there are no further statements, I would like to close the trial by just hitting on a

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

few points. That is, if there are no further statements, because when I have finished, I believe that is the end.

The Chairman: Are there any further statements that anyone wants to make?

Mr. Gleichman: A point of information, Mr. Chairman. May I have it?

The Chairman: Yes.

Mr. Gleichman: That dried fruit strike was after the war, not before.

Mr. Perucca: I am not familiar with it. I was just told that it was so. I don't know.

Mr. Duarte: If there are no other statements, I would like to make one.

1. Continuous meetings, going fishing, prayer meetings, or any other type of meeting during the war that are used or were used to keep workers off their jobs and stop production, was a strike. There are no two ways about it. There were many unions that had prayer meetings that lasted two weeks. There were many unions that had continuous meetings that lasted that length of time. Going fishing was a good example of how some unions struck. But, it was all subterfuge, it was all strikes, and it was a strike, when it got down to the sense of it. People were not working. They just did not go to work. They went to meetings. They did not hold meetings. They struck. It was a strike without pickets.

Any stoppage of work during the war was a

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

strike. You could not call it anything else but a strike. Give it any name you want, but it was a stoppage of work, and it was a strike.

The question of whether these people were engaged in a strike or not I think has been clearly shown by their own arguments and by the evidence presented. These people have been charged, these people and these people alone. But, I want to make one point that the Committee should take into consideration.

(1) That when this trial started there was a group of people here who are no longer present, but who left the meeting and refused to stand trial.

(2) That the people that remained did have an opportunity to state whether or not they were or were not engaged in a strike, a stoppage of work, a continuous meeting, a prayer meeting, or whether they went fishing. But, it all boils down to the fact that they were all engaged in a strike and a stoppage of work.

As to the two defendants who are charged with fomenting a strike, the proof I think exists in the fact that one of the brothers so charged left the meeting and refused to stand trial. The other brother remained and stood trial.

The evidence is before the Committee, and I say again that it is now the duty of the Committee, as they are charged by the membership of this Union, to search the record and make their recommendation to the membership.

Mr. Denkowski: Brother Chairman, a point of

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

information. I don't know, and maybe I am wrong, but there are quite a few of us—there is only a little group here, not the 200 or so people who went on strike and stayed for two and a half days. There are only a few of us in here, and some way or another we are taking a beating, or something, for the other people. They went on a strike for two and a half days. Why can't we all get punishment, instead of a few?

The Chairman: Does anyone have anything to say?

Mr. Duarte: I just want to reiterate that these people were charged. I want to point out once again that because there were other people who might have been in the same circumstances but were not charged does not excuse the guilt of anyone who was involved in the strike.

I think, Mr. Chairman, that ought to wind up the trial, and we should not get into a cross-fire here between the Defendants, myself and you.

Mr. Heppler: May I state one more thing, if I may?

I would like the Trial Committee to take into consideration that we have been off the job for going on close to four months, also, when they bring in their recommendations to the rank and file.

The Chairman: In closing, we on the Trial Committee of five members will try to come to a conclusion. We will consider both cases, the testimony of the witnesses and of the Defendants, and we will try our very best to come to what we consider

Intervener's Exhibit No. 9—Proceedings Before Warehouse Union—(Cont'd)

a fair decision of the issue. It will be presented at the next regular membership meeting, held the fourth Thursday night of this month at the Auditorium.

Mr. Duarte: That is the 27th.

The Chairman: The 27th would be right. This will all be done according to our Constitution.

If nobody else anything more to say, I think we can adjourn the meeting.

(Whereupon, at 10:30 P.M., Monday, December 17, 1945, the hearing of the Trial Committee was adjourned.)

[Endorsed]: No. 11514. United States Circuit Court of Appeals for the Ninth Circuit. Colgate-Palmolive-Peet Company, Petitioner, vs. National Labor Relations Board, Respondent, and International Chemical Workers Union, A.F.L., et al., Intervenors, and Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), Intervenor, and National Labor Relations Board, Petitioner, vs. Colgate-Palmolive-Peet Company, Respondent. Transcript of Record. Upon Petition to Review and Petition to Enforce Order of the National Labor Relations Board.

Filed · February 3, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit.

Vol. IV

TRANSCRIPT OF RECORD

[illegible]

Supreme Court of the United States

OCTOBER TERM, 1940

No. 47

COLGATE-PALMOLIVE-PEET COMPANY,
PETITIONER,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
ET AL.

[illegible]

[illegible]

PETITION FOR CERTIORARI FILED APRIL 4, 1941.

CERTIORARI GRANTED MAY 12, 1941.

Office - Supreme Court, U. S.
FILED
APR 4 1949
CHARLES ELMORE CROPLEY
CLERK

TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 694
695

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

In Four Volumes
VOLUME IV
(Pages 989 to 998, inclusive)

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 11514

IN THE

United States Court of Appeals For the Ninth Circuit

COLGATE-PALMOLIVE-PEET COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,

Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),

Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,

Respondent.

In Four Volumes

VOLUME IV

(Pages 989 to 998, inclusive)

Petition for Review, and Petition to Enforce Order of the National Labor Relations Board

PROCEEDINGS HAD IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, October 20, 1948.

Before: Mathews, Healy and Bone,
Circuit Judges.

ORDER OF SUBMISSION

Ordered petition to review and petition to enforce order of the National Labor Relations Board herein presented by Mr. H. J. Hecht, counsel for Colgate-Palmolive-Peet Co., and by Mr. Bernard Dunau, Attorney, National Labor Relations Board, counsel for said Board—Mr. Bertram Edises, counsel for Warehousemen's Union, and Mr. Matthew Tobringer, counsel for International Chemical Union, being present—and submitted to the court for consideration and decision.

In the United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, January 13, 1949.

Before: Mathews, Healy and Bone,
Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Upon Petition for Review and Petition to Enforce Order of the National Labor Relations Board

Before: Mathews, Healy and Bone,
Circuit Judges
Healy, Circuit Judge.

OPINION

This matter is here on petition of Colgate-Palmolive-Peet Company to set aside an order of the National Labor Relations Board, and on the Board's cross-petition for the enforcement of its order.

The case relates to Colgate's discharge of and its refusal to reinstate certain employees, thirty-seven in number, a course determined by the Board to be discriminatory under §8(1) and (3) of the Act. The illegality of Colgate's conduct, as determined by the Board, resides in its discharge of the employees pursuant to a closed-shop contract on demand of the union party thereto which had suspended the employees because of their activities in favor of a rival union at a time when activities looking toward a change of bargaining representatives were appropriate.

The closed-shop contract was between Colgate and a local of the CIO. It was entered into in 1941 for a term of indefinite duration, that is, "until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives." A condition of employment was that employees be "members in good standing" of the union. On July 24, 1945, a supplemental agreement was made extending the contract by providing that it should remain in effect pending the approval or disapproval by the Tenth Regional War Labor Board of certain changes.

Dissatisfaction with the CIO representation had been developing among Colgate's employees for some six months before the extension. Agitation was rife for the unhorsing of that union and the substitution of the AFL as bargaining representative. Organizational efforts of the insurgents culminated shortly in a series of meetings attended by a sub-

stantial majority of the employees, and in a vote to affiliate with the AFL. Steps were then taken to secure a change of representation by resort to formal Board process. The CIO countered with a series of suspensions followed by discharge-demands predicated on the suspensions, with the result that the employees here involved were discharged. These constituted substantially the ringleaders of the insurgent group.

The Board found as ultimate facts (a) that the CIO sought to use the closed-shop contract for the purpose of punishing the insurgents, and (b) that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union had suspended the men in reprisal for their activities in favor of the rival union. The evidence abundantly supports these findings. As a matter of law, the Board determined that the closed-shop contract did not preclude the employees from engaging in these activities at the time they did so. Its decision rests upon the reasoning followed in Matter of Rutland Court Owners, 44 NLRB 587, 46 NLRB 1040. This view had our approval in Local No. 2880 v. National Labor Relations Board, 158 F. 2d 365. The latter holding controls the present case.

The petition of Colgate is accordingly denied and a decree directing enforcing the Board's order in full.

[Endorsed]: Opinion. Filed Jan. 13, 1949. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor,

and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

DECREE

Upon consideration of the petition of Colgate-Palmolive-Peet Company, herein, filed December 30, 1946, for review of the order of the National Labor Relations Board herein entered on September 24, 1946, and of the petition of the said National Labor Relations Board filed February 3, 1947, for enforcement of its said order and of the complaint

in intervention of International Chemical Workers Union, A.F.L., et al., filed February 17, 1947, and of the complaint in intervention of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), filed February 25, 1947, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing,

It Is Ordered, Adjudged and Decreed by this Court that said petition to review be, and hereby is denied, and said petition to enforce be, and hereby is granted, and that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A. F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer Clyde Hayes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azavedo, Manuel Munez, Henry

Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and priveleges;

(b) Make whole the persons named above in paragraph 2 (a) of our Decree for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein, Sept. 24, 1946, to the date of the respondent's offer of reinstatement, less his net earnings during said period;"

" By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, County, Municipal, or other work relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U.S. 7.

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Decree, what steps the respondent has taken to comply herewith.

[Endorsed]: Filed January 13, 1949. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, February 4, 1949.

Before: Mathews, Healy and Bone,
Circuit Judges.

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of Colgate-Palmolive-Peet Co., for a rehearing of above cause, filed February 2, 1949, and within time allowed therefor by rule of court, be, and hereby is denied.

In the United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four volumes comprising nine hundred and ninety-seven (997) pages, numbered from and including 1 to and including 997, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the Petitioners, Colgate-Palmolive-Peet Company, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of February, 1949.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, limited to the question of the construction of Section 8 (3) of the National Labor Relations Act of 1935 in relation to this case.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3226)

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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~694~~ 47

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Subject Index

	Page
Petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit	1
Opinion below	2
Jurisdiction	2
Statutes	3
Statement of the matter involved in this petition	3
Questions presented	20
Reasons for granting writ	25
1. Conflict of decision between circuits	25
2. The decision of the Court of Appeals herein misapplies this court's decision in the Wallace case	25
3. The decision of the Court of Appeals sanctions legislation by the Board and it is therefore in conflict with the applicable decisions of this court	26
4. The decision of the court granting the Board the power to destroy valid union shop agreements and to interfere with the internal affairs of unions presents a problem which should be resolved by this court	27
5. The failure of the Court of Appeals to review the case in accordance with statutory standards prescribed by Congress presents a question which should be resolved by this court	29
6. The decision of the Court of Appeals, sustaining the findings of fact of the Board, is in conflict with the applicable decisions of this court	29
Appendix A	31
Appendix B	34
Brief in support of petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit	39
Preliminary statement	39
Specifications of error	40

Page

Summary of the argument 41

Argument 43

1. The decision and order affirmed by the court is based on the premise that Congress intended through the National Labor Relations Act to prohibit the coercion of employees by labor organizations. This premise is an essential prerequisite; otherwise, the Board's order effectively impairing the CIO's contract rights would constitute an arbitrary exercise of power. This premise is false. The express language of the Act and its congressional history furnish ample proof of its falsity. The decision of the Court of Appeals affirming the order of the Board is therefore erroneous and in conflict with the applicable decisions of this court..... 43

2. The decision of the Court of Appeals is based on the premise that this court's decision in the Wallace case is applicable to cases involving closed shop contracts with bona fide unions. This premise is false. The opinion of this court in the Wallace case, read as a whole, discloses that this premise is false. The Court of Appeals for the Seventh Circuit in Aluminum Co. of America v. National Labor Relations Board, 159 Fed. (2d) 523 applies properly the doctrine of the Wallace case and defines correctly the limits of the Board's statutory authority, and for these reasons the existing conflict should be resolved in its favor..... 49

3. The decision of the Court of Appeals establishes a precedent, which if allowed to stand will permit recalcitrant union members to disrupt and unsettle contracts designed to stabilize labor-management relationships 52

4. The order and decision affirmed by the Court of Appeals defeats the purpose of the National Labor Relations Act and will not effectuate its policies and should, therefore, be set aside 56

5. The Court of Appeals failed to review the instant case in accordance with standards promulgated in the Administrative Procedure Act and the Labor Management Relations Act, 1947 58

Page

(a) The Court of Appeals did not review the record as a whole in determining whether the findings of the Board are supported by substantial evidence 58

(b) The Court of Appeals did not decide all relevant questions of law 61

6. The Court of Appeals in sustaining certain essential findings of fact made by the Board made a decision in conflict with the applicable decisions of this court.... 61

Table of Authorities Cited

Cases **Pages**

Addison v. Holly Hill Fruit Products, 322 U. S. 607, 88 L. Ed. 1488 ..... 26, 48

Aluminum Co. of America v. National Labor Relations Board, 159 Fed. (2d) 523 ..... 25, 41, 52

Consolidated Edison Co. v. N.L.R.B., 305 U. S. 197, 83 L. Ed. 126 ..... 30, 45, 57, 63

Electric Storage Battery Co. v. Shimadzu, 307 U. S. 5, 83 L. Ed. 1071 ..... 27, 48

Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656 ..... 27, 48

Galloway v. U. S., 319 U. S. 372, 87 L. Ed. 1458 ..... 29, 62

Helvering v. Credit Alliance Corp., 316 U. S. 107, 86 L. Ed. 1307 ..... 27, 48

Helvering v. Sabine Transp. Co., 318 U. S. 306, 87 L. Ed. 773 ..... 27, 48

Iselin v. United States, 270 U. S. 245, 70 L. Ed. 566 ..... 26, 48

Koshland v. Helvering, 298 U. S. 441, 80 L. Ed. 1268 ..... 27, 48

Local No. 2880 v. N.L.R.B., 158 Fed. (2d) 365, cert. granted 331 U.S. 798, 91 L. Ed. 1824 ..... 19, 25, 43, 49, 52, 53

Louis Meier Co. v. N.L.R.B., 21 L.R.R.M. 2093, 13 Labor Cases, Par. 64163 25

Manhattan G. E. Co. v. Commissioner of Internal Revenue, 297 U. S. 129, 80 L. Ed. 528 ..... 27, 48

Matter of Diamond T Motor Car Company, 64 N.L.R.B. 1225 60

Matter of Lewis Meier & Company, 73 N.L.R.B. (F) 520 .. 47

Matter of Rutland Court Owners, 44 N.L.R.B. (F) 587 ..... 16, 19, 25, 43, 49, 60

Matter of Spicer Mfg. Corporation, 70 N.L.R.B. 41 60

Pages

National Linen Service Corp., 48 N.L.R.B. (F) 171 62
N.L.R.B. v. American White Cross Laboratories, 167 Fed. (2d) 75 25
N.L.R.B. v. Fansteel Metal Corp., 306 U. S. 247, 83 L. Ed. 627 58
N.L.R.B. v. Southern Steamship Co., 316 U. S. 31, 86 L. Ed. 1246 58

Wallace Corporation v. N.L.R.B., 323 U.S. 251, 89 L. Ed. 216 ..... 4, 25, 41, 49, 50, 51

Statutes

Judicial Code, Section 240(a) 2

Labor Management Relations Act, 1947, Section 102 ..... 3, 22, 27, 28, 29, 42, 53, 58

National Labor Relations Act:
Section 7 ..... 25, 26
Section 8 28

5 U.S.C.A. 1001 et seq. 3
5 U.S.C.A. 1009 24
5 U.S.C.A. 1009(e) 3, 37, 58, 61
28 U.S.C.A. 1254(1) 2
29 U.S.C.A. 7 5
29 U.S.C.A. 151 et seq. 3
29 U.S.C.A. 157 ..... 5, 15, 22, 23, 26, 27, 43, 44
29 U.S.C.A. 158 ..... 15, 34
29 U.S.C.A. 158(b)(1) 3
29 U.S.C.A. 158(b)(4) 3
29 U.S.C.A. 158(1) 16, 20
29 U.S.C.A. 158(2) 20
29 U.S.C.A. 158(3) 3, 6, 16, 20, 21, 24, 25, 26, 32, 40, 43, 44
29 U.S.C.A. 158(8) 22, 23, 24
29 U.S.C.A. 160(f) 2, 3, 24, 36, 58

Miscellaneous

	Pages
53 A.L.R. 1364, 1366	56
1 Am. Jur., Actions, Section 25, pages 420-421	55
12 Am. Jur., Section 155, pages 648-649	56
31 C. J. S., Evidence, Section 132, page 760	63
Carrow, "Background of Administrative Law", pages 90, 116-117	49
Cushman, "Independent Regulatory Commissions", 24 Cornell Law Quarterly, 13, pages 32-33	49
Federal Administrative Procedure Act, and the Administrative Agencies, Proceedings of the Institute conducted by the New York University School of Law, pages 586-589	59
"Federal Labor Relations Bill of 1947" (S. 1126), Subsections (1) and (2)	21, 22
Senate Report 105 on Labor Management Relations Act, pages 26-27	59
Stern, "Review of Findings of Administrative, Judges and Juries: A Comparative Analysis", 58 Harvard Law Review, 70, 98	46
Supreme Court Rules of the United States, Rule 38, paragraph 5(b)	3
"The Law Governing Labor Disputes and Collective Bargaining", pages 71-72	21, 22
"The New Labor Law", page C-21 (The Bureau of National Affairs)	21, 22
Van Arkel, "An Analysis of the Labor Management Relations Act, 1947", pages 31-32	28, 55

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred N. Vinson, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Colgate-Palmolive-Peet Company, a corporation, hereinafter called "Petitioner", respectfully prays

that a writ of certiorari issue to review a decision of the United States Court of Appeals for the Ninth Circuit, rendered on January 13, 1949 (R. IV, 997).[1] A petition for rehearing was denied on February 4, 1949 (R. IV, 997). The said judgment affirmed an order and decision of The National Labor Relations Board, hereinafter referred to as "Board", dated September 6, 1946 (R. I, 68-85). The case was brought to the United States Court of Appeals for the Ninth Circuit under the provisions of the National Labor Relations Act, 29 U.S.C.A. Sec. 160 (f), prior to its amendment by the Labor Management Relations Act, 1947.

OPINION BELOW.

The order and decision of the Board is reported in 70 N.L.R.B. (F.) 1202. The opinion of the United States Court of Appeals for the Ninth Circuit, as yet unreported, is attached hereto as Appendix "A". This opinion is contained in the record in Volume IV, at pages 990 to 992, inclusive.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a), Judicial Code, as amended, 28 U.S.C.A. 1254 (1), and Section 10 (f) of the National

---

[1] "R" refers to the printed transcript of records. The Roman numerals preceding the comma refer to the volume of the printed record in which the reference appears. The Arabic numerals following the comma refer to the pages of the volume of the printed record in which the reference appears.

Labor Relations Act, 29 U.S.C.A. 160(f) as amended by the Labor Management Relations Act, 1947. Petitioner also relies on Rule 38, Paragraph 5(b) of this Court for its grounds upon which this petition is made.

STATUTES.

The statutes involved are the following:

(1) The National Labor Relations Act, 29 U.S.C.A. 151, et seq., especially 29 U.S.C.A. 158 (3).

(2) The Labor Management Relations Act, 1947, 29 U.S.C.A. 151, et seq., especially 29 U.S.C.A. 158(a)(3), 158(b)(1), 158(b)(4) and 160(f).

(3) The Administrative Procedure Act, 5 U.S.C.A., Section 1001 et seq., especially Section 1009 (e).

Pertinent sections are set out in Appendix "B".

STATEMENT OF THE MATTER INVOLVED IN THIS PETITION.

This case arose out of a complaint issued by the Board charging the Petitioner with unfair labor practices (R. I, 4-10), and involves the discharge by Petitioner of thirty-seven of its employees as a result of demands therefor made, under the terms of a valid closed shop contract (R. I, 69; R. III, 787-788), by Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), hereafter referred to as the "CIO" (R. I, 178-179;

R. II, 521-525; R. III, 784-785; R. II, 527-528; 545; R. III, 846-847; R. I, 46; R. III, 806-807; R. II, 654-656; R. III, 733-734; 736; R. I, 50 and Note 20; R. III, 806; R. II, 654-656). The CIO was the bargaining representative of Petitioner's employees. With the exception of two, all of these employees had been members of the CIO (R. II, 641; 650). All but six[2] of the employees had, prior to their discharge, resigned, in mass, from the CIO (R. I, 70; 257; R. III, 786-787), and all of them without exception had participated in a strike not authorized by the CIO (R. I, 71-72; 257-258; R. II, 506-507). At the time these events occurred the war with Japan was still in progress, and the CIO had given a pledge not to engage in strikes during this period (R. II, 420-421; R. I, 258; R. II, 506-507). At the time that the employees resigned from the CIO and engaged in the strike, they were advocating a change of bargaining representatives and had formed the Colgate-Palmolive-Peet Company Employees' Welfare Association, hereinafter called the "Association", and were looking forward to affiliating with the International Chemical Workers Union, A.F.L., hereinafter referred to as "A.F.L.", (R. I, 256-258; R. II, 506-507).

The record of this proceeding discloses no history of hostility on the part of Petitioner to the organization of its employees. There is not involved in this case, as there was in *Wallace Corporation v. N.L.R.B.*, 323 U.S. 251, 89 L. Ed. 216, any question of domina-

[2]Including the two who were not members of the CIO.

tion by the employer of a labor organization or of collusion or conspiracy between the employer and a group of employees to deprive other employees of the rights guaranteed to them by Section 7 of the National Labor Relations Act (29 U.S.C.A. Sec. 7).

Petitioner's employees were first organized in 1936. At that time and for approximately two years thereafter, the I.L.A., affiliated with the American Federation of Labor, was the bargaining agent for said employees. Subsequently, on or about 1938, the employees shifted their allegiance from the I.L.A. to the CIO. The CIO is now and has been since 1938 the bargaining agent for Petitioner's employees in the proper bargaining unit (R. I, 286; R. II, 625; R. I, 23). On or about July 9, 1941, the CIO entered into a collective bargaining agreement with Petitioner (R. III, 787). This contract is of indefinite duration. Section 3 thersof provides as follows:

> "Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired through the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. *The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed.* In the

hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U." (Italics ours.) (R. III, 787-788; R. I, 222-223.)

The contract was amended and extended on July 24, 1945, subject to the approval of the War Labor Board (R. III, 788-790; R. I, 69).

The Board admits and found that this contract was made in compliance with the conditions set forth in the proviso of Section 8 (3) of the National Labor Relations Act (29 U.S.C.A. Section 158 (3)), which permits an employer to make a closed shop contract with a bona fide majority Union covering an appropriate unit (R. I, 69).

On demands of the CIO under the terms of the above quoted provisions of the collective bargaining agreement, Petitioner discharged the above mentioned employees. At the time that these demands were made, Petitioner was advised by the CIO that the discharged employees had been suspended from membership.

The events out of which this case arises occurred between July 20, 1945 and October 16, 1945. During that period, Petitioner was manufacturing glycerine at its Berkeley, California, plant for war purposes and was producing between four and five hundred thousand pounds per month (R. II, 559). The Petitioner then employed approximately 313 non-supervisory employees (R. II, 422). At that time, the CIO had pledged to the President and the nation "that until the war is ended, with the unconditional sur-

render of Japan, we will not strike, stop work, or cease or slow production for any reason whatsoever." (R. II, 420-421). In addition, the CIO had taker a strong stand against racial discrimination.

The management of Petitioner had known, for some time prior to July 26, 1945, that five of the employees subsequently discharged, who were CIO shop stewards at Petitioner's plant, had been accused of working against the established policies of the CIO, including the CIO's policy against racial discrimination. Information had also come to Petitioner's management of the fact that the stewards had been accused of being remiss in carrying out their duties of office in other particulars (R. III, 725-726; 763-768).

The salient and material facts disclosed by the printed record which consists of 998 pages, may be summarized as follows:

1. On July 26, 1945, twenty-eight to thirty employees, including the five stewards mentioned above, held a meeting to formulate plans to withdraw from the CIO, form the Association and to affiliate with a Local of a strong International. It was stipulated that Petitioner had no knowledge that this meeting was being held (R. I, 189-190; 260-261; 286-287; R. II, 408-409; R. I, 255).

2. On July 28, 1945, one of the stewards, pursuant to plans formulated at the above-mentioned meeting, posted notices at the plant of a meeting to be held on July 30, 1945 for all those interested in joining the Association. The notices did not disclose the purpose

of the meeting. The notices were called to the attention of Petitioner's Labor Relations Manager, but he did not associate the organization mentioned therein with one intended for collective bargaining purposes (R. I, 191-192; 213; R. III, 668; 721-722).

3. Prior to the holding of the announced meeting, one of the stewards, accompanied by one of the subsequently discharged employees, solicited and obtained from Petitioner's management a "lay-off" of two hours to enable the night shift employees to attend the meeting. There is no evidence that anyone informed Petitioner's representatives of the purpose of the meeting (R. I, 268-269).

4. On July 30, 1945, a few hours prior to the time announced for the meeting, five officers of the CIO called upon Petitioner's management representatives and delivered to them a letter, advising that charges had been preferred against the five stewards by the Union and that the men had been suspended from membership. The letter also contained a request that the stewards be immediately removed from the job until the charges had been determined by the CIO (R. III, 668-669; 784-785; R. I, 259). Petitioner's representatives protested the request, but the CIO officers called to their attention that under the terms of the agreement they had no alternative but to comply with the demand. The stewards were summoned, while the CIO officers were still present, and advised of their dismissal. At that time Petitioner's representatives received no information as to the reason underlying the

CIO's demand (R. III, 669-670; R. II, 523-525; 538-539). Immediately following the dismissal of the stewards, the CIO's representatives distributed in the plant a notice advising that anyone attending the meeting would do so at the "risk of losing membership and employment" (R. I, 256; R. II, 473; R. III, 785; R. I, 259). There is no evidence that Petitioner received information as to the contents of this notice.

5. Late in the afternoon of July 30, 1945, a substantial majority of Petitioner's employees attended the announced meeting (R. I, 256-257). At that time, those present authorized the sending of telegrams to Petitioner and the CIO, advising that they had withdrawn from and severed relations with the CIO (R. I, 198-201; R. III, 786-787; 848-850; R. I, 259), and appointed a commitee of four to negotiate with Petitioner's management for the reinstatement of the five stewards (R. I. 196; R. III, 848-849). It was also resolved at that time to go on strike in the event the demand for the reinstatement of the stewards was refused (R. III, 849).

6. On July 31, 1945, the four committeemen called on Petitioner's representatives and requested the reinstatement of the stewards. This request was refused (R. I, 257). Shortly thereafter, officers of the CIO called upon Petitioner's representatives and delivered a letter announcing the suspension from membership of the four committeemen and demanding their removal from the job, under the terms of the agreement (R. III, 671-673; 846). At that time there occurred

a verbal clash in the presence of Petitioner's representatives between the committeemen and the officers of the CIO. The spokesman for the committee charged the CIO with having failed to obtain wage increases for the employees. An officer of the CIO pointed out in reply to this charge that due to wartime restrictions it had been impossible to get such increases, and that the CIO reserved the right to discipline its members and to keep them working (R. II, 527-528; 545). At that time, the CIO officers advised Petitioner's representatives that the committeemen could be suspended for many different reasons and that they would have to stand trial before they could go back to work (R. II, 538). This incident ended at about 9:30 o'clock A.M. on July 31, 1945, with the dismissal of the four committeemen (R. II, 528-529).

7. Later in the morning of July 31, 1945 the CIO distributed copies of a circular in the plant (R. I, 257). The circular stated, among other things, that "unscrupulous people who are attempting to promote strike action at this plant are traitors to our Union membership, our flag and our country" (R. III, 789-790; R. I, 259).

8. Beginning at approximately noon on July 31, 1945, a substantial majority of Petitioner's employees went on strike. The strike lasted until the morning of August 3, 1945 (R. I, 72-73; 257-258; R. II, 533).

9. At the invitation of the strikers, one of Petitioner's officers went to the meeting late in the afternoon of July 31, 1945. He urged the employees to go

back to work (R. I, 257-258), and advised them that the men who had been suspended could not go back to work because of the provisions of the contract (R. II, 529-530).

10. On August 2, 1945, the strikers voted to dissolve the Association and to affiliate with the A.F.L. (R. I, 258).

11. On August 3, 1945, the employees, with the exception of the five stewards and the four committeemen, returned to work (R. I, 258).

12. News reports which appeared in the local press, and which came to the attention of Petitioner, reported, among the causes of the strike, a dispute over the issue of racial discrimination (R. II, 533; R. III, 776-778).

13. During the period of the strike, Petitioner secured the opinion of legal counsel as to the rights and liabilities of the parties under the collective bargaining agreement. Counsel advised that Petitioner had to comply strictly with the terms of the closed shop provision and that Petitioner could not pass upon the merits of the action taken by the CIO in suspending the employees. Petitioner acted thereafter in accordance with this advice (R. III, 726-727).

14. On August 3, 1945, the A.F.L. filed a petition for investigation and certification of representatives with the Board, and by August 8, 1945, thirty-five of the employees involved had applied for membership in the A.F.L. The period following, up to and including October 15, 1945, was utilized by adherents

of the CIO and of the A.F.L. in campaigning. Literature of both unions circulated inside as well as outside the plant. A.F.L. and CIO buttons were widely and openly worn (R. I, 41).

15. On August 14, 1945 the Board gave notice of hearing of the A.F.L.'s petition for certification and this notice was received by Petitioner on August 17, 1945 (R. II, 549).

16. On August 14, 1945, the first unfair labor charge preferred by the A.F.L. against Petitioner was filed. The charge set forth that Petitioner was engaging in unfair labor practices because it had terminated the employment of the five stewards and the four committeemen "because of their refusal to adhere to policies" of the CIO (R. I, 92-93).

17. On August 17, 1945 the nine suspended employees requested reinstatement. This request was denied by Petitioner because of the advice it had received from its attorneys (R. III, 727-728).

18. On August 31, 1945 the CIO requested and obtained the discharge of six employees pursuant to the closed shop agreement (R. III, 806-807; R. II, 654-656).

19. On September 1, 1945, the CIO conducted a wholesale inspection of employees' union dues books at the plant (R. III, 681-682; 709-713).

20. On August 31, 1945, and prior to the dues checking incident above referred to, a minor official of the CIO came to Petitioner's labor relations manager and requested the suspension of a long list of

employees, and stated, in support of his request, that the persons involved were in bad standing, that some of them had not paid their dues and that others were not members of the CIO. Petitioner's representative refused to accede to this request and took up the matter with another official of the CIO (R. III, 728-732).

21. On the day following the dues book checking incident, that is, September 1, 1945, Petitioner's representatives received a letter from the CIO requesting removal from the job of nineteen additional employees under the terms of the collective bargaining agreement and advising that the persons named therein were no longer in good standing (R. III, 792-793; R. I, 315). Petitioner complied with this demand, but prior to doing so it made inquiry from the CIO as to the reasons why these employees had been placed in bad standing and the CIO's reply to this inquiry was that these persons had violated their oath, the constitution and the by-laws of the CIO (R. III, 736).

22. Some days after September 1, 1945, four additional employees were dismissed pursuant to demands made by the CIO under the terms of the closed shop contract. One was discharged on September 5th, two on September 7th, and the fourth on September 11th, 1945 (R. I, 50 and Note 20; R. II, 806-807; R. II, 654-656).

23. Subsequent to their discharge, the five stewards and the four committeemen and the twenty-eight additional employees were tried before CIO rank and file tribunals. The transcript of the proceedings

before the CIO tribunals and the decision of the CIO were received in evidence (R. III, 877-922; 923; 987; 856; 866; 867-876; R. III, 771; 779).

24. The four committeemen and the five stewards refused to stand trial and were tried *in absentia* on October 3, 1945. On October 10, 1945 they were found guilty and expelled. They had been charged with dereliction of duty, failure to enforce the policy against racial discrimination and participation in a strike during the war (R. I, 52-53; R. III, 856-866; 877-922).

25. On October 16, 1945 an election of bargaining representatives was held at the plant and pursuant to the decision and direction of election issued by the Board on September 26, 1945 (R. II, 549). At this election the majority of votes was cast in favor of the CIO, notwithstanding the fact that most of the discharged employees voted (R. II, 550-551).

26. Sometime in November, 1945, the CIO informed Petitioner of the action taken with respect to the four committeemen and the five stewards (R. I, 154; R. III, 741-742; 762).

27. On December 17, 1945, the remaining twenty-eight employees who were members of the CIO were tried by the CIO (R. III, 923-987). Some of them withdrew after having participated in the preliminary portions of the trial (R. III, 924; 930-935). The ones who remained, eventually entered a plea of guilty and admitted that they had engaged in a prohibited strike (R. III, 969-976). On December 24, 1945 the trial committee issued its decision recom-

mending the expulsion of the employees who failed to stand trial and that the employees who pleaded guilty be placed on probation (R. III, 867-876).

The proceedings had before the Board and the United States Court of Appeals for the Ninth Circuit subsequent to the occurrence of the above narrated events can be summarized as follows:

1. The Board issued its complaint on January 1, 1946 (R. 1, 4-10) pursuant to charges preferred against Petitioner by the A.F.L. (R. I, 1-4). The complaint charged, in substance, that Petitioner had interfered with the rights guaranteed the employees by Section 7 of the National Labor Relations Act (29 U.S.C.A. 157) and had committed unfair labor practices in violation of Section 8 of the same Act (29 U.S.C.A. 158), in discharging and threatening to discharge employees and refusing to reinstate them because of their membership in and activity on behalf of the A.F.L. and the Association and because of their failure or refusal to join or assist the CIO. The Petitioner's answer denied certain allegations of the complaint and set forth the closed shop provision of the contract pursuant to which it acted. Its answer also set forth that some of the employees had been suspended and expelled by the CIO because of violations of its constitution and its policy against wartime strikes (R. I, 10-16).

2. A hearing was had on the matter from February 4 to February 6, 1946, at San Francisco, California,

before a Trial Examiner duly appointed by the Board (R. I, 21).

3. On March 27, 1946 the Trial Examiner issued his Intermediate Report and recommended therein that the complaint as a whole be dismissed (R. I, 17-68). The Trial Examiner found that under the facts it was impossible for Petitioner to determine whether the CIO had suspended the discharged employees for such valid reasons as their resignation from the CIO, and their participation in the strike, or because of their activities on behalf of the A.F.L., and the Association. He also found, in this connection, that the Petitioner could have ascertained the "true" motivation of the CIO only by intruding into the internal affairs of that Union, in violation of the National Labor Relations Act (R. I, 61-65).

4. On September 6, 1946, the Board issued its decision and order overruling the recommendation of the Trial Examiner (R. I, 68-83), and found that Petitioner had discharged and refused to reinstate the employees in violation of Section 8 (1) and (3) of the Act. (29 U.S.C.A. 158 (1) and (3).) The order issued by the Board pursuant to said decision requires Petitioner to offer immediate and full reinstatement to the discharged employees and to make them whole for any loss of pay suffered as a result of their discharge (R. I, 81-82). The Board, in making its decision, applied the doctrine developed by it in *Matter of Rutland Court Owners,* 44 N.L.R.B.(F) 587. The substance of the principle enunciated by the Board in that case is that an employer cannot properly discharge employees

pursuant to the closed shop provisions of a contract when, to his knowledge, the discharge is requested by the contracting Union for the purpose of eliminating employees who have sought to change bargaining representatives at a period when it is appropriate for the employees to seek a redetermination of representatives. The Board presumed, inasmuch as Petitioner had information indicating that the motive of the CIO *might* have been reprisal against the employees because of their advocacy of the A.F.L., that the Petitioner had, in fact, knowledge of this alleged discriminatory motivation. (Analysis, Sept. 23, 1946, 18 L.R.R. 85, 86-87.) The Board also found in this connection that Petitioner "made no bona fide effort to evaluate all the evidence before it" when it contended that it could not determine the CIO's "true" motivation (R. I, 78-79). The Board thus decided for the first time that an employer had the duty to evaluate or appraise evidence, yet the finding that the Petitioner did not act in good faith is based on the assumption that it knew that it was its duty to evaluate evidence. The other findings of the Board with respect to the Petitioner's alleged knowledge of the CIO's motives are all based on inference and on "expertness". The Board had to rely on inference and "expertness", because although it had direct evidence regarding this issuable fact it chose not to produce it.

5. On December 30, 1946, Petitioner filed its Petition for Review of the Board's decision and order in the United States Court of Appeals for the Ninth Circuit (R. I, 101-126). On February 3, 1947, the Board

filed its answer to Petitioner's petition, requesting the denial thereof and enforcement of the Board's order (R. I, 134-144).

6. On January 13, 1949, the Court of Appeals rendered its opinion and judgment affirming the decision of the Board (R. IV, 990-992). The Court stated in its opinion that the "evidence abundantly supports" the following findings of ultimate facts made by the Board:

(a) That the CIO sought to use the closed shop contract for the purpose of punishing the insurgents; and

(b) That Petitioner acceded to the discharge-demands notwithstanding it knew that the Union had suspended the men in reprisal for their activities in favor of the rival Union (R. IV, 992).

It is apparent from the Court's brief opinion that in approving the Board's findings it did not consider the following material facts:

(a) The employees' resignation from the CIO.

(b) The participation of all the discharged employees in an unauthorized strike, and the CIO's undisputed right to discipline the persons who took part in it.

(c) The admission of the five stewards and the four committeemen that they were suspended from the CIO because of their refusal to adhere to its policies.

Petitioner pointed out to the Court of Appeals that the Board, in making its findings of ultimate facts, had erred on questions of law. Among these were the following:

(a) Whether the CIO's lawful act of suspending the employees who participated in the strike was converted by its alleged malicious or bad motivation into an unlawful act.

(b) Whether the Board could rely, to carry the burden of proof, on the issuable fact of Petitioner's knowledge of the CIO's motives, on inferences and "expertness", when the Board had direct evidence as to this fact but chose not to produce it.

(c) Whether the finding of the Board that Petitioner made no bona fide effort to evaluate the evidence before it, is invalid because it is based on the equally invalid presumption that the Petitioner knew, before the fact, how the Board would construe the law.

The Court failed to pass on any of the questions of law above summarized.

In affirming the Board's decision, the Court of Appeals approved for the second time the principle established by the Board in *Matter of Rutland Court Owners*, 44 N.L.R.B.(F) 587, and stated that its approval of this principle in *Local No. 2880 v. N.L.R.B.*, 158 Fed. (2d) 365, controlled in the present case. This Court granted certiorari in *Local No. 2880 v. N.L.R.B.*, *supra* (331 U.S. 798, 91 L. Ed. 1824), but thereafter the petition was dismissed on motion of the petitioning Union. (332 U.S. 845.)

Petitioner, for the reasons hereinafter stated, now seeks review and reversal of the judgment of the Court of Appeals for the Ninth Circuit.

QUESTIONS PRESENTED.

Section 8 (1) and (3) of the National Labor Relations Act (29 U.S.C.A. 158 (1) and (2)), allegedly violated by the Petitioner, reads as follows:

> "Section 158. Unfair Labor Practices by Employer Defined.
>
> It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.
>
> * * * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, *That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization* (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) *to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.*" (Italics ours.)

The Board has ruled that the proviso to Section 8 (3), permiting a "closed shop" contract, is suspended at a time when it is appropriate for the employees to seek a redetermination of representatives, and when the employer *knows* that the contracting union has terminated or suspended the membership of an employee because of his advocacy of another bargaining agency. In view of the express language of the statute allegedly violated and of the facts and circumstances involved, this decision of the Board and the affirmance thereof by the Court of Appeals raise the following questions:

1. Whether the Board usurped the powers and functions of Congress by adding, through alleged construction, the following qualification to the proviso to Section 8 (3):

> "No employer shall justify any discrimination against an employee for nonmembership in a labor organization if he knows that membership was suspended or terminated because of activity to secure a determination pursuant to Section 9, at a time when a question concerning representation may be appropriately raised."[3]

2. Whether the Board, by nullifying a "closed shop" contract and interfering in the internal affairs of a union, usurped the powers and functions of Congress by adding, through alleged construction, the fol-

[3]Based on "Federal Labor Relations Bill of 1947" (S. 1126), as passed by the Senate (deleted in Conference). See special supplement to Teller "The Law Governing Labor Disputes and Collective Bargaining", pages 71-72 and "The New Labor Law", page C-20 (The Bureau of National Affairs).

lowing specification of unfair labor practices to Section 8:

> "It shall be an unfair practice for a labor organization or its agents—
>
> (1) To restrain or coerce employees in the exercise of the rights guaranteed in Section 7 * * *;
>
> (2) To persuade or attempt to persuade the employer to discriminate against an employee with respect to whom membership in such organization has been suspended or terminated because he engaged in activity to secure a determination pursuant to Section 9, at a time when a question concerning representation may be appropriately raised."[4]

If, in answer to the question presented in (2) above, it is held that the Board did not have the power to punish the CIO, directly or indirectly, for alleged unfair labor practices, whether the Board could require the vicarious expiation of the wrong-doing, if any, of the CIO through punishment visited upon the Petitioner.

3. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether the CIO's alleged unfair or malicious motivation deprives it of the legal

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[4]Based on "Federal Labor Relations Bill of 1947" (S. 1126), as passed by the Senate. Subsection (1) was modified and expanded in the Labor Relations Management Act, 1947; subsection (2) was deleted in Conference. See special supplement to Teller "The Law Governing Labor Disputes and Collective Bargaining", p. 72, and "The New Labor Law", page C-21 (The Bureau of National Affairs).

right to discipline its members when they have committed a plain and clear violation of its policies and pledge against wartime strikes.

4. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether the Petitioner had the legal right and obligation to refuse to perform the admittedly valid "closed shop" provision of the agreement, if it knew that the CIO, in exercising the legal right to discipline its members because of a plain and clear violation of its rules, was motivated by malice and ill-will against those who sought to displace it as a representative of Petitioner's employees.

5. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether members of a union, who have plainly and clearly violated its rules, may immunize themselves against discipline by activity on behalf of a rival union.

6. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether the CIO because of its alleged unfair motivation can be deprived of the right to obtain, under the terms of a valid "closed shop" agreement, the discharge of persons who have voluntarily resigned from its membership.

7. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether the Board sustained the burden of proving that Petitioner knew that the

CIO had disciplined its members because of their anti-CIO activity, and not because of their plain and clear violation of the CIO policies against wartime strikes, racial discrimination, etc.

8. If it is held that the Board has properly construed Section 8 and has not usurped the powers and functions of Congress, whether the Board sustained the burden of proving that the Petitioner made no bona fide effort to evaluate the evidence before it.

In the event that the construction which the Board placed on Section 8(1) and (3) is held invalid as an usurpation of the powers and functions of Congress, these questions are also raised:

9. Whether the Board, by nullifying the "closed shop" contract, deprives the Petitioner and the CIO of property without due process.

10. Whether the Board, in ordering Petitioner to make whole the discharged employees for loss of pay, deprives the Petitioner of property without due process.

The Court of Appeals, in reviewing this case, did not review the whole record and the portions thereof cited by Petitioner, and did not decide certain relevant questions of law. The action of the Court, therefore, raises the following question:

11. Whether the Court of Appeals complied with the statutory duty cast upon it by 5 U.S.C.A. 1009, and by 29 U.S.C.A. 160(f). (Labor Management Relations Act, 1947.)

REASONS FOR GRANTING WRIT.

1. Conflict of Decision Between Circuits.

The Board's doctrine enunciated in *Matter of Rutland Court Owners*, 44 N.L.R.B. (F) 587, has been approved by the Court of Appeals for the Ninth Circuit in the instant case and in *Local No. 2880 v. N.L.R.B.*, 158 Fed. (2d) 365. The Circuit Court of Appeals for the Second Circuit has likewise approved the Board's doctrine in *N.L.R.B. v. American White Cross Laboratories*, 167 Fed. (2d) 75. On the other hand, the Circuit Court of Appeals for the Seventh Circuit has unqualifiedly rejected the Board's attempt to amend the proviso to Section 8(3) of the National Labor Relations Act in the cases of *Aluminum Company of America v. N.L.R.B.*, 159 Fed. (2d) 253 and *Louis Meier Co. v. N.L.R.B.*, 21 L.R.R.M. 2093, 13 Labor Cases, Par. 64163.

2. The Decision of the Court of Appeals Herein Misapplies this Court's Decision in the Wallace case.

The Court of Appeals held that its ruling in the instant case was controlled by its decision in *Local No. 2880 v. N.L.R.B.*, supra. In *Local 2880*, the Court of Appeals held that the doctrine announced by the Board in *Matter of Rutland Court Owners*, supra, was sustained by this Court's decision in *Wallace Corporation v. N.L.R.B.*, supra, 323 U.S. 248, 89 L. Ed. 216. This Court's decision in the *Wallace* case applies to misconduct and collusion between an employer and a company union to deprive employees of rights guaranteed by Section 7 of the National

Labor Relations Act. We, therefore, submit that the principle announced therein is misapplied, when it is sought to extend it to a situation involving an employer who has not colluded or conspired to contravene Section 7 of the National Labor Relations Act, but has merely complied with the obligations of an admittedly valid "closed shop" contract.

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3. The Decision of the Court of Appeals Sanctions Legislation by the Board and it is Therefore in Conflict With the Applicable Decisions of this Court.

The Board, by adding qualifications to the proviso of Section 8(3) of the National Labor Relations Act and by interfering with the property rights of a labor organization, has, in effect, amended the Act. The Court of Appeals, in giving its approval to these acts of legislation, decided important questions of Federal law in conflict with the applicable decisions of this Court.

> "Legislation introducing a new system is at best empirical, and not infrequently administration reveals gaps or inadequacies of one sort or another that call for amendatory legislation. But it is no warrant for extending a statute that experience may disclose that it should have been made more comprehensive."
>
> *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 88 L. Ed. 1488.

See also:

Iselin v. United States, 270 U.S. 245, 70 L. Ed. 566;

Manhattan G. E. Co. v. Commissioner of Int. Rev., 297 U.S. 129, 80 L. Ed. 528;

Koshland v. Helvering, 298 U.S. 441, 80 L. Ed. 1268;

Electric Storage Battery Co. v. Shimadzu, 307 U.S. 5, 83 L. Ed. 1071;

Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 84 L. Ed. 656;

Helvering v. Credit Alliance Corp., 316 U.S. 107, 86 L. Ed. 1307;

Helvering v. Sabine Transp. Co., 318 U.S. 306, 87 L. Ed. 773.

4. The Decision of the Court Granting the Board the Power to Destroy Valid Union Shop Agreements and to Interfere With the Internal Affairs of Unions Presents a Problem Which Should be Resolved by this Court.

The Labor Management Relations Act, 1947, prohibits the "closed shop", but has left unimpaired and in full force and effect all "closed shop" contracts entered into prior to the date of its enactment.[5] The decision of the Court of Appeals, however, seriously affects, impairs and disturbs employer-employee relationships controlled by all such contracts. The Board and the Court of Appeals have, in effect, through the decision herein, done that which Congress refused to do, to-wit, impair the integrity and validity of "closed shop" contracts validly made pursuant to the pro-

[5]Sec. 102, Labor Management Relations Act, 1947.

visions of Section 8 of the National Labor Relations Act. We submit, therefore, that the Court of Appeals has erroneously decided a question of great public importance gravely affecting labor-management relationships in many industries.

The Labor Management Relations Act, 1947, prohibits the discharge of an employee for "*non-membership*" in a labor organization if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than failure of the employee "to pay dues or initiation fees", but has left unimpaired the right of unions to request a discharge of a *union member* for reasons other than the advocacy of a rival organization, and has likewise left unimpaired the right of unions to prescribe their "own rules with respect to the acquisition or retention of membership".[a] The Court of Appeals, however, has in effect, by its decision herein, vested in the Board power to interfere in the internal affairs of unions and seriously to impair their right to discipline their members. These are prerogatives not granted the Board by either the Labor Management Relations Act, 1947, or by the National Labor Relations Act. We submit, therefore, that the Court of Appeals has erroneously decided another question of great public importance seriously affecting all labor organizations and their millions of members.

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[a]Van Arkel, "An Analysis of the Labor Management Relations Act, 1947", pp. 31-32.

5. The Failure of the Court of Appeals to Review the Case in Accordance With Statutory Standards Prescribed by Congress Presents a Question Which Should be Resolved by this Court.

The Administrative Procedure Act and the Labor Management Relations Act, 1947, require that the Court shall review the whole record or such portions thereof as may be cited by any party. The Court of Appeals did not, in the instant case, comply with this requirement.

The Administrative Procedure Act requires that the reviewing Court decide all relevant questions of law and that it set aside findings and conclusions that are arbitrary and capricious or otherwise not in accordance with law. The Court of Appeals, in the instant case, did not comply with these requirements.

6. The Decision of the Court of Appeals, Sustaining the Findings of Fact of the Board, is in Conflict With the Applicable Decisions of this Court.

(a) The findings of the Board with respect to the issuable fact of Petitioner's knowledge of the CIO's motive, based on inference and expertness, should have been rejected by the Court of Appeals, because there was direct evidence readily available concerning this fact, but the Board chose not to produce it.

Galloway v. U. S., 319 U.S. 372, 87 L. Ed. 1458.

(b) The findings of the Board that Petitioner made no bona fide effort to evaluate the evidence concerning the CIO's motivation should have been rejected by the Court of Appeals because it is based on

the irrational presumption that the Petitioner knew, before the fact, how the Board would construe the law.

Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 83 L. Ed. 126.

WHEREFORE, Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Dated, San Francisco, California,
April 1, 1949.

Respectfully submitted,

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(Appendices A and B Follow.)

Appendix A

In the United States Court of Appeals for the Ninth Circuit

Colgate-Palmolive-Peet Company, Petitioner, vs. National Labor Relations Board, Respondent, and International Chemical Workers Union, A.F.L., et al., Intervenors, and Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), Intervenor, and National Labor Relations Board, Petitioner, vs. Colgate-Palmolive-Peet Company, Respondent.	No. 11,514 Jan. 13, 1949

Upon Petition for Review and Petition to Enforce Order of the National Labor Relations Board

Before: Mathews, Healy, and Bone, Circuit Judges

Healy, Circuit Judge

This matter is here on petition of Colgate-Palmolive-Peet Company to set aside an order of the National Labor Relations Board, and on the Board's cross-petition for the enforcement of its order.

The case relates to Colgate's discharge of and its refusal to reinstate certain employees, thirty-seven in number, a course determined by the Board to be discriminatory under § 8(1) and (3) of the Act. The illegality of Colgate's conduct, as determined by the Board, resides in its discharge of the employees pursuant to a closed-shop contract on demand of the union party thereto which had suspended the employees because of their activities in favor of a rival union at a time when activities looking toward a change of bargaining representatives were appropriate.

The closed-shop contract was between Colgate and a local of the CIO. It was entered into in 1941 for a term of indefinite duration, that is, "until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives." A condition of employment was that employees be "members in good standing" of the union. On July 24, 1945, a supplemental agreement was made extending the contract by providing that it should remain in effect pending the approval or disapproval by the Tenth Regional War Labor Board of certain changes.

Dissatisfaction with the CIO representation had been developing among Colgate's employees for some six months before the extension. Agitation was rife for the unhorsing of that union and the substitution of

the AFL as bargaining representative. Organizational efforts of the insurgents culminated shortly in a series of meetings attended by a substantial majority of the employees, and in a vote to affiliate with the AFL. Steps were then taken to secure a change of representation by resort to formal Board process. The CIO countered with a series of suspensions followed by discharge-demands predicated on the suspensions, with the result that the employees here involved were discharged. These constituted substantially the ringleaders of the insurgent group.

The Board found as ultimate facts (a) that the CIO sought to use the closed-shop contract for the purpose of punishing the insurgents, and (b) that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union had suspended the men in reprisal for their activities in favor of the rival union. The evidence abundantly supports these findings. As a matter of law, the Board determined that the closed-shop contract did not preclude the employees from engaging in these activities at the time they did so. Its decision rests upon the reasoning followed in Matter of Rutland Court Owners, 44 NLRB 587; 46 NLRB 1040. This view had our approval in Local No. 2880 v. National Labor Relations Board, 158 F. (2d) 365. The latter holding controls the present case.

The petition of Colgate is accordingly denied and a decree directed enforcing the Board's order in full.

(Endorsed:) Opinion. Filed Jan. 13, 1949. Paul P. O'Brien, Clerk.

Appendix B

29 U.S.C.A. 157 (National Labor Relations Act):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

29 U.S.C.A. 158 (National Labor Relations Act):

"It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) * * * ;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a), in the appropriate collective bargaining unit covered by such agreement when made."

29 U.S.C.A. 158 (Labor Management Relations Act, 1947):

"(a) It shall be unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) * * * ;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this sub-chapter or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 158 (a) of this title as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made; * * *: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required

as a condition of acquiring or retaining membership;

(4) * * *

(5) * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * *."

29 U.S.C.A. 160 (f) (Labor Management Relations Act, 1947):

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in

such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

5 U.S.C.A. 1009 (e) (Administrative Procedure Act):

"So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not

in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A. F. L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO),
Intervenor.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

PRELIMINARY STATEMENT.

Reference is hereby made to the foregoing petition for the opinions below, grounds of jurisdiction, statutes

involved, statement of the case, questions presented and reasons for granting the writ.

SPECIFICATIONS OF ERROR.

Petitioner submits that the Court of Appeals erred in the following particulars:

1. In holding that Congress intended, in enacting the National Labor Relations Act, that discharges made pursuant to a valid closed shop contract should in themselves constitute an unfair labor practice.

2. In holding that Congress intended, in enacting the National Labor Relations Act, that the Board should have the power to regulate employees and labor organizations.

3. In holding that Congress intended, in enacting the National Labor Relations Act, to prohibit the coercion of employees by employees or labor organizations.

4. In holding that Congress intended, in enacting the National Labor Relations Act, to empower the Board to protect a recalcitrant union member from his Union's discipline.

5. In affirming the findings and conclusions of the Board, that Petitioner committed acts inhibited by Section 8 (1) and (3) of the National Labor Relations Act, without the support of substantial evidence.

6. In failing to review the whole record, or the portions thereof cited by the Petitioner.

7. In failing to decide relevant questions of law and in failing to set aside findings and conclusions that are arbitrary and capricious and not in accordance with law.

SUMMARY OF THE ARGUMENT.

1. The decision and order affirmed by the Court is based on the premise that Congress intended through the National Labor Relations Act to prohibit the coercion of employees by labor organizations. This premise is an essential prerequisite; otherwise, the Board's order effectively impairing the CIO's contract rights would constitute an arbitrary exercise of power. This premise is false. The express language of the Act and its Congressional history furnish ample proof of its falsity. The decision of the Court of Appeals affirming the order of the Board is therefore erroneous and in conflict with the applicable decisions of this Court.

2. The decision of the Court of Appeals is based on the premise that this Court's decision in the *Wallace* case is applicable to cases involving closed shop contracts with bona fide unions. This premise is false. The opinion of this Court in the *Wallace* case, read as a whole, discloses that this premise is false. The Court of Appeals for the Seventh Circuit in *Aluminum Co. of America v. National Labor Relations Board*, 159 Fed. (2d) 523 applies properly the doctrine of the *Wallace* case and defines correctly the

limits of the Board's statutory authority, and for these reasons the existing conflict should be resolved in its favor.

3. The decision of the Court of Appeals establishes a precedent, which if allowed to stand will permit recalcitrant union members to disrupt and unsettle contracts designed to stabilize labor-management relationships.

4. The order and decision affirmed by the Court of Appeals defeats the purpose of the National Labor Relations Act and will not effectuate its policies and should, therefore, be set aside.

5. The Court of Appeals failed to review the instant case in accordance with the standards promulgated in the Administrative Procedure Act and the Labor Management Relations Act, 1947.

6. The Court of Appeals in sustaining certain essential findings of fact made by the Board made a decision in conflict with the applicable decisions of this Court.

ARGUMENT.

1. **THE DECISION AND ORDER AFFIRMED BY THE COURT IS BASED ON THE PREMISE THAT CONGRESS INTENDED THROUGH THE NATIONAL LABOR RELATIONS ACT TO PROHIBIT THE COERCION OF EMPLOYEES BY LABOR ORGANIZATIONS. THIS PREMISE IS AN ESSENTIAL PREREQUISITE; OTHERWISE, THE BOARD'S ORDER EFFECTIVELY IMPAIRING THE CIO'S CONTRACT RIGHTS WOULD CONSTITUTE AN ARBITRARY EXERCISE OF POWER. THIS PREMISE IS FALSE. THE EXPRESS LANGUAGE OF THE ACT AND ITS CONGRESSIONAL HISTORY FURNISH AMPLE PROOF OF ITS FALSITY. THE DECISION OF THE COURT OF APPEALS AFFIRMING THE ORDER OF THE BOARD IS THEREFORE ERRONEOUS AND IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.**

The decision and order of the Board herein was affirmed by the Court of Appeals for the Ninth Circuit on the authority of its decision in the case of *Local No. 2880 v. N.L.R.B.*, 158 Fed. (2d) 365. In that case the Court of Appeals gave approval for the first time to the doctrine enunciated by the Board in the *Matter of Rutland Court Owners*, 44 N.L.R.B. (F) 587. In the last mentioned case, the Board held that Section 8(3)[7] of the National Labor Relations Act does not permit an employee to comply with the "closed shop" provisions of a contract when to his knowledge enforcement of the contract is being sought for rival union activities, where such activities are carried on during a period when it is appropriate to seek a change in representation. This view, the Board states, represents its considered judgment as to how the conflict between the general guarantees of Section 7,[8] which

[7]Appendix "B", p. 34.
[8]Appendix "B", p. 34.

permits employees to choose and change representatives, and the limitations imposed by the proviso to Section 8 (3), which permits discipline of employees in the interest of Union security, may most reasonably be reconciled so that the legitimate scope of each may be preserved without nullifying the other. The Board's construction of the proviso of Section 8 (3) in relation to Section 7 was upheld by the Court of Appeals on the basis of the following proposition:

A labor organization which so coerces an employee as to cause him to exercise the rights guaranteed by Section 7 in fear of discharge is ineligible to become or remain a party to a closed shop contract, and a discharge by an employer pursuant to a contract vitiated by the ineligibility of the coercing union, is assistance of the type defined by Section 8 (1)[9] of the Act as an unfair labor practice. (158 Fed. (2d) 368, 369.)

The reasoning of the Court of Appeals depends for its validity on the truth of the premise that a labor organization which coerces employees "is ineligible to become a party to a closed shop contract", and this premise itself must depend for its validity on the assumption that Congress intended to make illegal the coercion of employees by employees or labor organizations. The assumption that Congress intended to forbid the coercion of employees by labor organizations is an essential prerequisite, otherwise, the Board's order effectively impairing the Union's rights

[9]Appendix "B", p. 34.

under the contract, would be entirely without support, and would constitute an arbitrary exercise of power.[10] We submit that there is nothing in the Act or in its history that expressly or by implication can lend support to this assumption.

The only unfair labor practices denounced and defined by the Act are those of the employer. No mention is made therein of the unfair labor practices of Unions. That Congress intended that there should be no unfair labor practices other than those of the employer is clearly shown by the Senate Report which accompanied the adoption of the Act. There, the following appears:

> "*Sections 7 and 8. Rights of Employees.*—These sections are designed to establish and protect the basic rights incidental to the practice of collective bargaining. At this juncture the committee wishes to emphasize two points. In the first place, the unfair labor practices under the purview of this bill are strictly limited to those enumerated in section 8. This is made clear by paragraph 8 of section 2, which provides that 'The term "unfair labor practice" means any unfair labor practice listed in Section 8,' and by section 10 (a) empowering the Board to prevent any unfair labor practice 'listed in Section 8.' Unlike the Federal Trade Commis-

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[10] "We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside."

Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 233, 83 L.Ed. 126, 142.

"Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations."

Consolidated Edison Co. v. N.L.R.B., supra, 305 U.S. 235, 83 L.Ed. 143.

sion Act, which deals somewhat analogously with unfair trade practices, this bill is specific in its terms. *Neither the National Labor Relations Board nor the courts are given any blanket authorits to prohibit whatever labor practices that in their judgment are deemed to be unfair.* * * *"* Senate Report No. 573, May 2, 1935, 74th Cong. 1st Sess. (Italics ours.)

The Senate Report also clearly and unmistakably shows that Congress did not intend to prohibit the coercion of employees by labor organizations or to grant power to the Board to regulate unions, directly or indirectly, through orders directed at the employer.[11] We refer the Court to the following taken from this Report:

> *"Regulation of employees and labor organizations is no more germane to the purpose of this bill than would be the regulation of employers and employer associations in connection with the organization of employers in trade associations.*
>
> *There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organization;* courts have held

[11] "In reaching a conclusion as to such a matter, the Court would be guided by all appropriate manifestations of legislative intention. Thus, if statutory language or an explanation in the legislative history showed that any of the above factors should or should not be considered the Court would so rule. Or if the legislative history manifested a definite understanding that the Act was or was not to apply to a particular class of persons, that would also be controlling, since the manifested legislative intention is 'law' in the strictest sense."

Stern, *"Review of Findings of Administrators, Judges and Juries: A Comparative Analysis,"* 58 Harvard Law Review, 70, 98.

a great variety of activities to constitute 'coercion'; a threat to strike, a refusal to work on material of non-union manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts *closed shop agreements* or strikes for such agreements *are condemned as 'coercive'; thus, to prohibit employees from coercing their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations—ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.*" (Italics ours.) See Senate Reports, Vol. 9877, 74th Congress, First Session, R. 573, to accompany S. 958, May 2, 1935, page 16.

Moreover, the Board itself confesses that it is powerless to regulate labor unions under the National Labor Relations Act. In *Matter of Lewis Meier & Company*, 73 N.L.R.B. (F) 520, 523, the Board said:

"Moreover, it appears from the legislative history of the Act that Congress rejected the concept that labor organizations should be made amenable to Section 8 thereof. The respective committee reports to both the Senate and the House of Representatives mention proposals for prohibiting labor organizations, as well as employers, from engaging in activities defined in Section 8 as unfair labor practices. *Indeed, attention was explicitly called to the possibility of arbitrary use of the closed shop by labor organizations, and specific proposals were made for its avoidance. Congress, however, refused to include any of these proposals in the Act as written.*" (Italics ours.)

It is clear, therefore, that in coercing its own side, a Union did not, under the National Labor Relations Act, indulge in culpable conduct violative of any Congressional mandate.

Accordingly, it is respectfully submitted that the premise upon which the decision of the Court of Appeals is based is false. From this it follows that the impairment of the CIO's contractual rights through an order directed at the Petitioner is without warrant and constitutes legislation in the guise of adjudication, and is in conflict with the following decisions of this Court:

Addison v. Holly Hill Fruit Products, 322 U.S. 607, 88 L. Ed. 1488;

Iselin v. U. S., 270 U.S. 245, 70 L. Ed. 566;

Manhattan G. E. Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 80 L. Ed. 528;

Koshland v. Helvering, 298 U.S. 441, 80 L. Ed. 1269;

Electric Storage Battery Co. v. Shimadzu, 307 U.S. 5, 83 L. Ed. 1071;

Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 84 L. Ed. 656;

Helvering v. Credit Alliance Corp., 316 U.S. 107, 86 L. Ed. 1307;

Helvering v. Sabine Transp. Co., 318 U.S. 306, 87 L. Ed. 773.

We submit also that this arbitrary exercise of power by the Board is actually a deprivation of the Peti-

tioner's and the CIO's property rights without due process.

Carrow, *"Background of Administrative Law"*, pp. 90; 116-117;

Cushman, *"Independent Regulatory Commissions"*, 24 Cornell Law Quarterly, 13, pp. 32-33.

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2. THE DECISION OF THE COURT OF APPEALS IS BASED ON THE PREMISE THAT THIS COURT'S DECISION IN THE WALLACE CASE IS APPLICABLE TO CASES INVOLVING CLOSED SHOP CONTRACTS WITH BONA FIDE UNIONS. THIS PREMISE IS FALSE. THE OPINION OF THIS COURT IN THE WALLACE CASE, READ AS A WHOLE, DISCLOSES THAT THIS PREMISE IS FALSE. THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN ALUMINUM CO. OF AMERICA v. NATIONAL LABOR RELATIONS BOARD, 159 FED. (2d) 523 APPLIES PROPERLY THE DOCTRINE OF THE WALLACE CASE AND DEFINES CORRECTLY THE LIMITS OF THE BOARD'S STATUTORY AUTHORITY, AND FOR THESE REASONS THE EXISTING CONFLICT SHOULD BE RESOLVED IN ITS FAVOR.

The decision of the Court of Appeals herein was made on the authority of *Local No. 2880 v. N.L.R.B.*, supra. In that case, the Court of Appeals held that the conclusion reached by the Board in *Matter of Rutland Court Owners*, supra, was supported by the decision of this Court in *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248, 89 L. Ed. 216, and quoted the following from this Court's opinion as supporting the Board's conclusion:

> "* * * We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize

> a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers* * *.'"

This incomplete statement of this Court's ruling, taken by itself, would indicate that this Court had approved regulation by the Board of bona fide independent unions, and that this Court had made a decision in conflict with the clear terms of the statute and the intent of Congress. However, two sentences that follow the portion of the opinion quoted by the Court of Appeals show unmistakably that this Court's decision in the *Wallace* case applies solely to the unfair labor practices of an employer committed through the medium of a dominated or company union. The portions of the opinion omitted by the Court of Appeals read as follows:

> "It was as much a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with the Independent as it would have been had the company done it alone. *To permit it to do so by indirection, through the medium of a 'union' of its own creation, would be to sanction a readily-contrived mechanism for evasion of the Act.*" (Italics ours.) (393 U.S. 256, 89 L. Ed. 227.)

It seems to us very clear, in view of the express language of the statute, its history and the opinion of this Court, read as a whole, that the Court of Appeals

has misapplied the doctrine of the *Wallace* case when it has extended it to a closed shop contract with a bona fide union.

The *Wallace* case was also called to the attention of the Court of Appeals for the Seventh Circuit as supporting the contentions of the Board. That Court held the *Wallace* case inapplicable in a situation where, as here, "the discharge is pursuant to an existent closed shop agreement untainted by any unfair labor practice." (159 Fed. (2d) 526.)

In making this ruling, the Court examined the clear and unambiguous language of the statute and said:

> "It is apropos at this point to note that the Board's order appears to be founded upon a misinterpretation of the Act and thereby fails to effectuate its policies. Among other things the Act was designed to strengthen the unions in their dealings with the employers. The closed-shop proviso is an example. *But while the Act protects individual union mmebers from discriminatory discharge it strains the imagination to see where in the Act Congress has intended that discharges made pursuant to a valid union security contract should in themselves constitute an unfair labor practice. It would appear that the effect of this order is that the Board is seeking to protect a recalcitrant member from his union's discipline.*" (159 Fed. (2d) 526.) (Italics ours.)

It is submitted that the decision of the Court of Appeals for the Seventh Circuit properly and reasonably marks the limits of the statutory authority of the Board in its ruling that the Board exceeds its

powers when it attempts to protect a recalcitrant union member from his union's discipline. For these reasons we respectfully submit that the existing conflicts should be resolved by this Court in favor of the decision made in *Aluminum Co. of America v. N.L.R.B.*, supra.

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3. THE DECISION OF THE COURT OF APPEALS ESTABLISHES A PRECEDENT, WHICH IF ALLOWED TO STAND WILL PERMIT RECALCITRANT UNION MEMBERS TO DISRUPT AND UNSETTLE CONTRACTS DESIGNED TO STABILIZE LABOR-MANAGEMENT RELATIONSHIPS.

The decisions of the Court of Appeals in the instant case goes farther to sanction Board interference in Union affairs and in affording protection to recalcitrant union members who have flagrantly violated union rules and the provisions of labor-management contracts, than does its decision in *Local No. 2880 v. N.L.R.B.*, supra. The Court's opinion fails to mention, but it is undisputed, that the discharged employees resigned, en masse, from the CIO and that all of the employees, without exception, participated in a strike violative of the CIO's pledge. Thus, the Court's decision gives tacit approval to the proposition that employees may refuse to maintain membership in a union, though this be required as a condition of employment in a collective bargaining agreement, and that union members may disrupt their union and violate its rules, so long as they make plain and manifect their hostility to it, and engage in activities in favor of a rival organization. It is also the tacit de-

cision of the Court that under such circumstances the Board may interfere in matters of union discipline, probe union motives and penalize an employer if he has information that the union's motive in demanding the discharge of recalcitrant members *might* be reprisal for activities on behalf of a rival organization. It must be remembered that we do not have here a situation as in *Local No. 2880,* supra, where the only error or offense of the discharged employee was to assume that he could exercise the rights given to employees by the National Labor Relations Act without retaliation. Here the offenses of the discharged employees were real and violative of sound and patriotic union policy and of unimpeached and untainted contractual obligations.

The extension of the principle of the decision in *Local No. 2880,* supra, to the facts of this case makes it possible for the Board to interfere in labor-management relationships controlled by "closed shop" contracts entered into prior to the enactment of the Labor Management Relations Act, 1947,[12] and to intrude into

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[12] "• • • the provisions of section 8 (a) (2) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto."

Section 102, Labor Management Relations Act, 1947.

the internal affairs of unions contrary to the spirit and letter of the National Labor Relations Act.

This decision would also permit the Board to interfere with the rights preserved to unions by the Labor Management Relations Act, 1947. This Act does not impair the right of labor unions to secure the discharge of a union member, while he remains such a member, except in the single instance where the discharge is sought to discourage or encourage membership in a labor organization.

> "It would appear that there is nothing in the Act which makes it illegal for a union to request the discharge of a *union* member; Section 8 (b) (2) makes it illegal for a union 'to cause or attempt to cause an employer to discriminate against an employee * * * with respect to whom membership in such organization has been denied or terminated * * *' but contains no prohibition against seeking the discharge of one who is presently a union member. And the proviso to Section 8 (a) (3) apparently makes it proper for an employer to acquiesce in such a demand for discharge of a union member, where it is not 'to encourage or discourage membership in any labor organization' since the prohibition is directed at discrimination against an employee for non-membership in a labor organization. In other words, if a union feels that a member is a labor spy, or professionally incompetent, or disruptive of the union and the like, it seems that they may demand the discharge of such member *before* (but not after) expelling him from the union. And a strike for such a purpose would appear to be legal under Section 8 (b) (4) and Title III, Section 303 (a);

the specific proviso in Section 8 (b) (1) allowing a union to 'prescribe its own rules with respect to the acquisition or retention of membership' seems to preclude a claim that such a strike would be illegal under that section."

Van Arkel, "*An Analysis of the Labor Management Relations Act*, 1947, p. 31.

Under the present decision, the Board can interfere with the above outlined rights of unions preserved by the Labor Management Relations Act, 1947, if the recalcitrant union member before embarking on a campaign of sabotage and disruption manifests his hostility to the contracting union, and the Board finds that the employer has information that the union *might* be acting on reprisal for activities on behalf of a rival organization.

We submit, therefore, that the precedent established by the Court of Appeals' decision presents questions of great public importance affecting unions, their members and employers, which should be resolved by this Court.

Its decision also tacitly overrules two well established principles of law and presents another question which should be resolved by this Court. It is the general rule that a legal act, in this instance, the CIO action in disciplining members for gross violations of its rules, is not rendered actionable as a wrong by virtue of the intent with which it is done. (1 *Am. Jur., Actions,* Sec. 25, pp. 420-421.) It is also the general rule where there is no illegality in the making or per-

formance of a contract, as in this case, that the contract is enforceable even though the promisor knows that the performance thereof will incidentally assist the promisee to evade the law or public policy. (12 *Am. Jur.*, Sec. 155, pp. 648-649; 53 *A.L.R.* 1364, 1366.)

The petitioner, as the record makes evident, performed its agreement with the CIO in reliance on these two well established principles. The decision of the Court of Appeals permitting the petitioner to be penalized for acting in accordance with well established standards of law, therefore, presents the question whether the public policy of the United States, as expressed in the National Labor Relations Act and the Labor Management Relations Act, 1947, will be best served by discarding these principles in cases involving collective bargaining agreements and substituting therefor shifting and variable standards devised by the Board, which encourage industrial strife and impair and disturb relationship heretofore stabilized by labor-management contracts. We submit that this is another important question which should also be resolved by this Court.

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4. THE ORDER AND DECISION AFFIRMED BY THE COURT OF APPEALS DEFEATS THE PURPOSE OF THE NATIONAL LABOR RELATIONS ACT AND WILL NOT EFFECTUATE ITS POLICIES AND SHOULD, THEREFORE, BE SET ASIDE.

It is assumed, for the purposes of this portion of our argument, that the Board has power to regulate unions' indirectly and to interfere with their property rights.

Granting this premise, it is impossible to find a reasonable basis for the Board's order under the facts of this case.

As we know, the discharged employees all resigned from the CIO and they all participated in an unauthorized strike. The National Labor Relations Act and the Labor Management Relations Act, 1947, were both intended by Congress to eliminate to the fullest extent possible industrial strife and to stabilize management-labor relations.[13] The wilful conduct of the discharged employees, it must be conceded, was designed to defeat the intent of Congress. The provisions of both Acts are ample and sufficient to have brought about an orderly and peaceful settlement of the dispute, but the employees chose to resort to strife and disorder, and it should be noted, in this connection that the Board has, at no time, contended that the participation of the employees in an unauthorized strike did not furnish sufficient cause to the CIO to discipline them. We submit that, therefore, the order is not designed to effectuate the policies of the Act, and the decision of the Court of Appeals affirming it is in conflict with the following applicable decisions of this Court:

Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 83 L. Ed. 126;

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[13] "Moreover, the fundamental purpose of the Act is to protect commerce from interference and obstruction caused by industrial strife."

Consolidated Edison Co. v. N.L.R.B., supra, 305 U.S. 237, 85 L.Ed. 144.

N.L.R.B. v. Fansteel Metal Corp., 306 U.S. 247, 83 L. Ed. 627;
N.L.R.B. v. Southern Steamship Co., 316 U.S. 31, 86 L. Ed. 1246.

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5. THE COURT OF APPEALS FAILED TO REVIEW THE INSTANT CASE IN ACCORDANCE WITH STANDARDS PROMULGATED IN THE ADMINISTRATIVE PROCEDURE ACT AND THE LABOR MANAGEMENT RELATIONS ACT, 1947.

(a) The Court of Appeals did not review the record as a whole in determining whether the findings of the Board are supported by substantial evidence.

Section 10(e) of the Administrative Procedure Act (5 U.S.C.A. 1009(e))[14] provides, in part, as follows:

> "The reviewing court shall * * * hold unlawful and set aside agency * * * findings, and conclusions found to be * * * (5) unsupported by substantial evidence * * *. In making the foregoing determination, the court *shall* review the *whole* record or such portions thereof as may be cited by any party, * * *." (Italics ours.)

Section 10(f) of the Labor Management Relations Act, 1947 (29 U.S.C.A. 160(f)),[15] provides, in part, as follows:

> "The findings of the Board with respect to questions of fact *if* supported by substantial evidence on the record considered as a *whole* shall be conclusive." (Italics ours.)

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[14]Effective September 11, 1946.
[15]Effective June 23, 1947.

The history of the Labor Management Relations Act, 1947, shows that it was the intent of Congress to conform the review section of this statute to the corresponding section of the Administrative Procedure Act (Senate Report 105 on Labor Management Relations Act, 1947, pages 26-27).

The purpose of the provisions of the above quoted statutes is to require the reviewing Court at least to look at the evidence on both sides and see whether the evidence in support of the administrative finding or conclusion can fairly be regarded as substantial in the face of the evidence on the other side.[16]

The recital of facts contained in the opinion of the Court is notable for its brevity. It omits the facts which render the evidence offered by the Board in support of its findings unsubstantial, and thereby makes it evident that the Court of Appeals did not review this cause in accordance with the requirements of the above quoted statute.

The Court, as the opinion discloses, examined part of the record and decided that the evidence "abundantly supports" the Board's findings of ultimate facts that the CIO used the closed shop contract for the purpose of punishing the insurgents and that the Petitioner acceded to the discharge-demands of the CIO notwithstanding *it knew* the CIO had suspended the men in reprisal for activities on behalf of a rival organization (R. IV, 992).

[16]Federal Administra[illegible] Procedure Act, and the Administrative Agencies, Proceedi[illegible] of the Institute conducted by the New York University School of Law, pages 586-589.

The Court, however, failed to determine whether the evidence in support of the Board's finding of Petitioner's knowledge remained substantial in the background of the evidence showing the mass resignation of the employees from the CIO, their participation in the strike and the uncontradicted testimony of Petitioner's officers that they had not been able to arrive at a definite opinion with respect to the CIO's motivation (R. III, 736-738). In this connection it should be borne in mind that the Board requires knowledge of the contracting union's motivation, not perplexity or uncertainty, before applying the principle of the *Rutland Court Owners* case.[17]

The record presents a situation where reasonable minds appraising the same facts could differ on the question of the CIO's motivation, but the Board assumes that the Petitioner had knowledge because it had some information that the CIO *might* be acting in reprisal. In other words, the Board is punishing the Petitioner because it did not arrive at the same conclusions the Board did.

We submit, therefore, that the Board's evidence is not substantial when considered in relation to other evidence in the record. The Board's reasoning in arriving at its findings of ultimate fact also raises relevant questions of law which the Court did not resolve and in this respect the Court also failed to comply with the statutory requirements.

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[17] *Matter of Spicer Mfg. Corporation*, 70 N.L.R.B. 41, and *Matter of Diamond T Motor Car Company*, 64 N.L.R.B. 1225.

(b) The Court of Appeals did not decide all relevant questions of law.

The review section of the Administrative Procedure Act provides, in part, as follows:

> "So far as necessary to decision and where presented, the reviewing court *shall* decide *all relevant questions of law,* interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of any agency action." (5 U.S.C.A. 1009 (e)). (Italics ours.)

The above statute, not merely gives the reviewing Court the power, but it also places it under the obligation to "decide all relevant questions of law".

In Section 4 of our argument we raised the question whether the Board could hold that the CIO's lawful action in disciplining its members became unlawful because of a state of mind, and whether the petitioner could refuse to perform a lawful contract because it knew that such performance might incidentally assist the CIO to evade the law. The Court of Appeals did not decide this question.

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6. THE COURT OF APPEALS IN SUSTAINING CERTAIN ESSENTIAL FINDINGS OF FACT MADE BY THE BOARD MADE A DECISION IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

(a) One of the Board's essential findings is that the Petitioner had knowledge of the anti-CIO activity of the five stewards when it consented to their discharge (R. I, 70: 77).

There was no direct evidence as to this, but the Board inferred from the fact that the Petitioner consented to a "lay-off" of two hours to enable the employees to attend the initial meeting, that the Petitioner must have ascertained the "true" or anti-CIO purpose of the meeting. This, of course, is based on the invalid premise that employers in general, and the Petitioner in particular, always ascertain the true purpose of a meeting when time is granted therefor. But aside from the logical invalidity of this inference, there is an even stronger reason against the propriety of basing this finding on inference or on the Board's expertness in the field of labor relations. There were five persons, all of them witnesses at the hearing, from whom the Board could have elicited direct evidence, had it so desired, as to whether the Petitioner was told or ascertained the "true" purpose of the meeting, but it did not do so (R. I, 268-269). Under such circumstances, the Board cannot rely on inferences to sustain its finding and the decision of the Court of Appeals affirming it is in conflict with the applicable decisions of this Court.

Galloway v. U. S., 319 U.S. 372, 87 L. Ed. 1458.

(b) In ruling against Petitioner, the Board had to overcome the fact that the discharged employees' misconduct, independent of their permissible union activities, was of a character which justified their discharge, even under the Board's own understanding of the law (*National Linen Service Corp.*, 48 N.L.R.B. (F) 171, 204-205). In an attempt to overcome the obstacles presented by this fact, the Board made the conclu-

sionary finding that the petitioner "*made no 'bona fide' effort to evaluate all the evidence* before it when it allegedly decided, despite the CIO's failure to deny the obvious facts, to believe that the CIO was not acting in reprisal against the complainants because of their anti-CIO activity" (R. I, 79).

There is implicit in this finding of bad faith the assumption that the Petitioner knew that it had the duty to evaluate or appraise the evidence. This assumption is absurd and irrational because up to the time this case was decided, the Board had made no decision and had made no ruling which required an employer to appraise, weigh or evaluate evidence.[18] (R. I, 59 and Footnote 28; 62-63).

We submit that the decision of the Court of Appeals affirming this finding is in conflict with the applicable decisions of this Court.

Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 83 L. Ed. 126.

Dated, San Francisco, California,
April 1, 1949.

Respectfully submitted,
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Of Counsel.

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[18] 31 *C.J.S.*, Evidence, Section 132, p. 760.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1949

No. 47

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONER.

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Subject Index

	Page
Opinions below	1
Jurisdiction	2
Statutes involved	2
Statement of the case	2
Specifications of error	17
Summary of argument	18
The development of the Rutland Court Doctrine and the argument in support of its validity	19
Argument	19
The question presented	19
The Rutland Court Doctrine in the Courts of Appeals	32
Local 2880, etc. v. Board: The rationale of the Rutland Court Doctrine	33
The board's defense of the rationale of the Rutland Court Doctrine	36
Wrongful union conduct: The board's false major premise	38

Table of Authorities Cited

Cases	Pages
Addison v. Holly Hill Fruit Products, 322 U. S. 607, 88 L. Ed. 1488	62
Algoma P. & V. Co. v. Wis. Emp. Rel. Bd., 336 U. S. 301, 93 L. Ed. Ad. Ops. 541	46, 48
Allen v. Flood, App. Cas. (1898), H. of L. 1, in 1908	47
Aluminum Company of America v. N.L.R.B., 159 F. (2d) 523	33
American Fed. of Labor v. American Sash & Door Co., 335 U. S. 538, 93 L. Ed. Ad. Ops. 209	45
Colonie Fibre Co. v. N.L.R.B., 163 F. (2d) 65	32
Consolidated Edison Co. v. N.L.R.B., 305 U. S. 197, 83 L. Ed. 126	35
Davis v. International Alliance, etc. Employees, 60 Cal. App. (2d) 713, 141 Pac. (2d) 486	48
Electric Storage Battery Co. v. Shimadzu, 307 U. S. 5, 83 L. Ed. 1071	62
Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656	63
Helvering v. Credit Alliance Corp., 316 U. S. 107, 86 L. Ed. 1307	63
Helvering v. Sabine Transp. Co., 318 U. S. 306, 87 L. Ed. 773	63
Iselin v. U. S., 270 U. S. 245, 70 L. Ed. 566	62
James v. Marinship Corp., 25 Cal. (2d) 721, 155 Pac. (2d) 329	47
Koshland v. Helvering, 298 U. S. 441, 80 L. Ed. 1269	62
Lauf v. E. G. Shinner & Co., 82 Fed. (2d) 68	41
Lauf v. E. G. Shinner & Co., 303 U. S. 330, 82 L. Ed. 877	40, 43, 44
Levy v. Superior Court, 15 Cal. (2d) 692, 104 Pac. (2d) 770	46
Lewis Meier & Co. v. N.L.R.B., 21 L.R.R.M. 2093, 13 Labor Cases, Par. 64163	33
Local No. 2880 v. N.L.R.B., 158 F. (2d) 365	17, 33, 39, 58, 62

Pages

Manhattan G. E. Co. v. Commissioner of Internal Revenue, 297 U. S. 129, 80 L. Ed. 528 62
Matter of Ansley Radio Corporation, 18 N.L.R.B. 1028 ..21, 22, 24
Matter of Colgate-Palmolive-Peet Company, 70 N.L.R.B. 1202 31
Matter of Detroit & Cleveland Navigation Co., 29 N.L.R.B. 176 50
Matter of Diamond T. Motor Car Company, 64 N.L.R.B. 1225 . 28
Matter of Durasteel Company, 73 N.L.R.B. 941 ..... 30, 31
Matter of Kimberly-Clark Corp., 61 N.L.R.B. 90 31
Matter of Lewis Meier & Company, 73 N.L.R.B. 520 29
Matter of Mill B. Inc., 40 N.L.R.B. 346 31
Matter of Rutland Court Owners, 44 N.L.R.B. 587 .... 16, 17, 19, 24, 32, 57, 65
Matter of Southwestern Portland Cement Co., 65 N.L.R.B. 1 28
Montalbo v. Hires Bottling Co., 59 Cal. App. (2d) 642, 139 Pac. (2d) 666 46

N.L.R.B. v. American White Cross Laboratory, 160 F. (2d) 75 32
N.L.R.B. v. Geraldine Novelty Co., 173 F. (2d) 14 32
N.L.R.B. v. Public Transport Service Co., 24 L.R.R.M. 2466 (Sept., 1949) 32

Owens-Illinois Glass Co. v. N.L.R.B., 176 F. (2d) 172 ..... 32, 63

Park & T. L. Corp. v. Int. etc. of Teamsters, 27 Cal. (2d) 599, 165 Pac. (2d) 891, 162 A. L. R. 1426 47
Parkinson Co. v. Building Trades Council, 154 Cal. 581, 98 Pac. 1027, 2 L.R.A. (N.S.) 550 47
People v. Brophy, 49 Cal. App. (2d) 15, 120 Pac. (2d) 946 . 38

Steele v. Louisville & Nashville R. R. Co., 332 U. S. 192, 89 L. Ed. 173 65

United States v. Hutcheson, 312 U. S. 219, 85 L. Ed. 788 44

Wallace Corporation v. National Labor Relations Board, 323 U. S. 251, 89 L. Ed. 216 ..... 4, 32, 63, 64
Williams v. International Brotherhood of Boiler Makers, 27 Cal. (2d) 586, 165 Pac. (2d) 903 47

Statutes **Pages**

Judicial Code, Section 240 (a) 2

Labor Code of California:
Sections 921 and 923 47
Section 1126 46

Labor Code of Wisconsin (St. Wis. 1933), Section 268.18 40
Labor Disputes Act, Section 5(6) 50
Labor Management Relations Act, 1947 ..... 58, 59

National Industrial Recovery Act:
Section 1 39
Section 7(a) 49

National Labor Relations Act:
Section 7 ..... 4, 19, 20, 25, 31, 34, 38, 39, 58
Section 8 39
Section 8(1) 15, 58, 61
Section 8(b) (1) and (2) 58
Section 8(3) 5, 15, 18, 19, 20, 25, 31, 34, 46, 62
Section 9(c) 23
Section 10(e) and (f) 2

15 U.S.C.A. 707(a) 49
28 U.S.C.A. 1254(1) 2
29 U.S.C.A. 1, 7 and 8 39
29 U.S.C.A. 7 4
29 U.S.C.A. 102 40
29 U.S.C.A. 113(a) 43
29 U.S.C.A. 113(c) 43
29 U.S.C.A. 151 ..... 2, 39
29 U.S.C.A. 157 20
29 U.S.C.A. 158(1) 15
29 U.S.C.A. 158(b)(1)(2) 59
29 U.S.C.A. 158(3) 2, 5, 15, 20
29 U.S.C.A. 160 (e) and (f) 2

Miscellaneous

Pages

53 A.L.R. 1364, 1366 38

78 Cong. Rec. 3443 ..... 49, 50

Gregory, "Labor and the Law", 246 (W. W. Norton & Company, New York, 1946) 56
Gregory, op. cit., 317 57

H.R. Report No. 510, 8th Congress, 1st Session:
Pages 30-1 60
Pages 39-40 ..... 60, 61
Hearings before Senate Committee on Education and Labor:
March 11, 1935, page 47 52
March 18, 1935, page 179 53

"Labor Injunctions Since the N.R.A.", 43 Yale L. Jour. 625, 632-633 49

18 L.R.R. 85, 86-87 ..... 16, 31

Magruder, "A One-Half Century of Legal Influence Upon the Development of Collective Bargaining", 50 Harv. L. Rev. 1071, 1108-10 56

Texts

Rep. No. 1147 of House Committee on Labor, June 10, 1935, 74th Cong., 1st Sess., pages 15 to 17 55
Restatement, Torts, Section 810, Comment b 48

Senate Reports, Vol. 9877, 74th Cong., 1st Sess., R. 573, to accompany S. 958, May 2, 1935, at page 16 55
Sutherland, "Statutory Construction" (3rd Ed.), Section 1930, pages 412-16 58

Teller, "Labor Disputes in Collective Bargaining", Vol. Two, page 695 56

In the Supreme Court
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BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the Court of Appeals, for the Ninth Circuit (R. IV, 990-992) is reported in 171 F.(2d) 956. The findings, conclusions and order of the National Labor Relations Board (R. I, 68-85) are reported in 70 N.L.R.B. 1202.

JURISDICTION.

The decree of the Court of Appeals was entered on January 13, 1949. (R. IV, 993-996.) A petition for rehearing was denied on February 4, 1949. (R. IV, 997.) The petition for writ of certiorari was filed on April 4, 1949, and was granted on May 31, 1949. (R. IV, 999.) The jurisdiction of this Court rests on Section 240 (a), Judicial Code, as amended, 28 U.S.C.A. 1254 (1), and Section 10 (e) and (f) of the National Labor Relations Act of 1935, 29 U.S.C.A. 160 (e) and (f), as amended by the Labor Management Relations Act, 1947.

STATUTES INVOLVED.

Under the terms of the order granting certiorari (R. IV, 999), the statute involved is the National Labor Relations Act of 1935, 29 U.S.C.A. 151, et seq., especially 29 U.S.C.A. 158 (3). The pertinent sections of this statute are set forth in the Appendix.

STATEMENT OF THE CASE.

This case arose out of a complaint issued by the Board charging the petitioner with unfair labor practices (R. I, 4-10), and involves the discharge by petitioner of thirty-seven of its employees as a result of demands therefor made, under the terms of a valid closed shop contract (R. I, 69; R. III, 787-788), by Warehouse Union Local 6, International Longshore-

men's & Warehousemen's Union (CIO), hereafter referred to as the "CIO". (R. I, 178-179; R. II, 521-525; R. III, 784-785; R. II, 527-528; 545; R. III, 846-847; R. I, 46; R. III, 806-807; R. II, 654-656; R. III, 733-734; 736; R. I, 50 and Note 20; R. III, 806; R. II, 654-656.) The CIO was the bargaining representative of petitioner's employees. With the exception of two, all of these employees had been members of the CIO. (R. II, 641; 650.) All but six[1] of the employees had, prior to their discharge, resigned, in mass, from the CIO (R. I, 70; 257; R. III, 786-787), and all of them without exception had participated in a strike not authorized by the CIO. (R. I, 71-72; 257-258; R. II, 506-507.) At the time these events occurred, the war with Japan was still in progress, and the CIO had given a pledge not to engage in strikes during this period. (R. II, 420-421; R. I, 258; R. II, 506-507.) At the time that the employees resigned from the CIO and engaged in the strike, they were advocating a change of bargaining representatives and had formed the Colgate-Palmolive-Peet Company Employees' Welfare Association, hereinafter called the "Association", and were looking forward to affiliating with the International Chemical Workers Union, A.F.L., hereinafter referred to as "A.F.L." (R. I, 256-258; R. II, 506-507.)

In considering the evidence hereinafter summarized, it should be borne in mind that the Record of this proceeding discloses no history of hostility on the

[1]Including the two who were not members of the CIO.

part of the petitioner to the organization of its employees and that there is not involved in this case, as there was in *Wallace Corporation v. National Labor Relations Board*, 323 U.S. 251, 89 L.Ed. 216, any question of domination by the employer of a labor organization or of any agreement between the employer and a group of employees to deprive other employees of the rights guaranteed to them by Section 7 of the National Labor Relations Act of 1935. (29 U.S.C.A. 7.)

The facts which form the background of this controversy may be summarized as follows:

Petitioner's employees were first organized in 1936. At that time and for approximately two years thereafter, the I.L.A., affiliated with the American Federation of Labor, was the bargaining agent for the employees. Subsequently, on or about 1938, the employees shifted their allegiance rom the I.L.A. to the CIO. The CIO is now, and has been since 1938, the bargaining agent for petitioner's employees in the proper bargaining unit. (R. I, 286; R. II, 625; R. I, 23.) On or about July 9, 1941, the CIO entered into a collective bargaining agreement with petitioner. (R. III, 787.) This contract is of indefinite duration. Section 3 thereof provides as follows:

> "Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired through the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the union

is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. *The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed.* In the hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U." (Italics ours.) (R. III, 787-788; R. I, 222-223.)

The contract was amended and extended on July 24, 1945, subject to the approval of the War Labor Board. (R. III, 788-790; R. I, 69.)

The Board admits and found that this contract was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the National Labor Relations Act of 1935 (29 U.S.C.A. Section 158 (3)), which permitted an employer to make a closed shop contract with a bona fide majority Union covering an appropriate unit. (R. I, 69.)

The events out of which case arose occurred between July 26, 1945 and December 17, 1945. Petitioner was, during this period, manufacturing at its plant in Berkeley, California, glycerine for war purposes and was producing it at the rate of between four and five hundred thousand pounds per month. (R. II, 559.) The petitioner then employed approximately 313 non-supervisory employees. (R. II, 422.) There was then

in effect a pledge by the CIO to the President and the Nation "that until the war is ended, with the unconditional surrender of Japan, we will not strike, stop work or cease or slow production for any reason whatsoever". (R. II, 420-421.) Then, as now, the CIO was strongly opposed to racial discrimination.

The management of petitioner had known for some time prior to July 26, 1945, that five of the employees subsequently discharged, who were CIO shop stewards at petitioner's plant, had been accused of working against the established policies of the CIO, including the CIO's policy against racial discriminaton. Information had also come to petitioner's management of the fact that the stewards had been accused of being remiss in carrying out their duties of office in other particulars. (R. III, 725-726; 763-768.)

The events which occurred on and subsequent to July 26, 1945 may be summarized as follows:

1. On July 26, 1945, twenty-eight to thirty employees, including the five stewards mentioned above, held a meeting to formulate plans to withdraw from the CIO, form the Association and to affiliate with a Local of a strong International. It was stipulated that petitioner had no knowledge that this meeting was being held. (R. I, 189-190; 260-261; 286-287; R. II, 408-409; R. I, 255.)

2. On July 28, 1945, one of the stewards, pursuant to plans made at the above mentioned meeting, posted notices at the plant of a meeting to be held on July 30, 1945, for all those interested in joining the Asso-

ciation. The notices did not disclose the purpose of the meeting. The notices were called to the attention of petitioner's Labor Relations Manager, but he did not associate the organization mentioned therein with one intended for collective bargaining purposes. (R. I, 191-192; 213; R. III, 668; 721-722.)

3. Prior to the holding of the announced meeting, one of the stewards, accompanied by one of the subsequently discharged employees, solicited and obtained from petitioner's management a "lay-off" of two hours to enable the night shift employees to attend the meeting. There is no evidence that anyone informed petitioner's representatives of the purpose of the meeting. (R. I, 268-269.)

4. On July 30, 1945, a few hours prior to the time announced for the meeting, five officers of the CIO called upon petitioner's management representatives and delivered to them a letter, advising that charges had been preferred against the five stewards by the Union and that the men had been suspended from membership. The letter also contained a request that the stewards be immediately removed from the job until the charges had been determined by the CIO. (R. III, 668-669; 784-785; R. I. 259.) Petitioner's representatives protested the request, but the CIO officers called to their attention the fact that under the terms of the agreement they had no alternative but to comply with the demand. The stewards were summoned, while the CIO officers were still present, and advised of their dismissal. At that time peti-

tioner's representatives received no information as to the reason underlying the CIO's demand. (R. III, 669-670; R. II, 523-525; 538-539.) Immediately following the dismissal of the stewards, the CIO's representatives distributed in the plant a notice advising that anyone attending the meeting would do so at the "risk of losing membership and employment". (R. I, 256; R. II, 473; R. III, 785; R. I, 259.) There is no evidence that petitioner received information as to the contents of this notice.

5. Late in the afternoon of July 30, 1945, a substantial majority of petitioner's employees attended the meeting. (R. I, 256-257.) At that time, those present authorized the sending of telegrams to petitioner and the CIO, advising that they had withdrawn from and severed relations with the CIO (R. I, 198-201; R. III, 786-787; 848-850; R. I, 259), and appointed a committee of four to negotiate with petitioner's management for the reinstatement of the five stewards. (R. I, 198; R. III, 848-849.) It was also resolved at that time to go on strike in the event the demand for the reinstatement of the stewards was refused. (R. III, 849.)

6. On July 31, 1945, the four committeemen called on petitioner's representatives and requested the reinstatement of the stewards. This request was refused. (R. I, 257.) Shortly thereafter, officers of the CIO called upon petitioner's representatives and delivered a letter announcing the suspension from membership of the four committeemen and demanding their re-

moval from the job, under the terms of the agreement. (R. III, 671-673, 846.) At that time there occurred a verbal clash in the presence of petitioner's representatives between the committeemen and the officers of the CIO. The spokesman for the committee charged the CIO with having failed to obtain wage increases for the employees. An officer of the CIO pointed out in reply to this charge that due to wartime restrictions it had been impossible to get such increases, and that the CIO reserved the right to discipline its members and to keep them working. (R. II, 527-528, 545.) At that time, the CIO officers advised petitioner's representatives that the committeemen could be suspended for many reasons and that they would have to stand trial before they could go back to work. (R. II, 538.) This incident ended at about 9:30 o'clock A.M. on July 31, 1945, with the dismissal of the four committeemen. (R. II, 528-529.)

7. Later in the morning of July 31, 1945 the CIO distributed copies of a circular in the plant. (R. I, 257.) The circular stated, among other things, that "unscrupulous people who are attempting to promote strike action at this plant are traitors to our Union membership, our flag and our country." (R. III, 789-790; R. I, 259.)

8. Beginning at approximately noon on July 31, 1945, a substantial majority of petitioner's employees went on strike. The strike lasted until the morning of August 3, 1945. (R. I, 72-73; 257-258; R. II, 533.)

9. At the invitation of the strikers, one of petitioner's officers went to the meeting late in the afternoon of July 31, 1945. He urged the employees to go back to work (R. I, 257-258), and advised them that the men who had been suspended could not go back to work because of the provisions of the contract. (R. II, 529-530.)

10. On August 2, 1945, the strikers voted to dissolve the association and to affiliate with the A.F.L. (R. I, 259.)

11. On August 3, 1945, the employees, with the exception of the five stewards and the four committeemen, returned to work. (R. I, 258.)

12. News reports which appeared in the local press, and which came to the attention of petitioner, reported, among the causes of the strike, a dispute over the issue of racial discrimination. (R. II, 533; R. III, 776-778.)

13. During the period of the strike, petitioner secured the opinion of legal counsel as to the rights and liabilities of the parties under the collective bargaining agreement. Counsel advised that petitioner had to comply strictly with the terms of the closed shop provision and that petitioner could not pass upon the merits of the action taken by the CIO in suspending the employees. Petitioner acted thereafter in accordance with this advice. (R. III, 726-727.)

14. On August 3, 1945, the A.F.L. filed a petition for investigation and certification of representatives

with the Board, and by August 8, 1945, thirty-five of the employees involved had applied for membership in the A.F.L. The period following, up to and including October 15, 1945, was utilized by adherents of the CIO and of the A.F.L. in campaigning. Literature of both unions circulated inside as well as outside the plant. A.F.L. and CIO buttons were widely and openly worn. (R. I, 41.)

15. On August 14, 1945, the Board gave notice of hearing of the A.F.L.'s petition for certification and this notice was received by petitioner on August 17, 1945. (R. II, 549.)

16. On August 14, 1945, the first unfair labor charge preferred by the A.F.L. against petitioner was filed. The charge set forth that petitioner was engaging in unfair labor practices because it had terminated the employment of the five stewards and the four committeemen "because of their refusal to adhere to policies" of the CIO. (R. I, 92-93.)

17. On August 17, 1945, the nine suspended employees requested reinstatement. This request was denied by petitioner because of the advice it had received from its attorneys. (R. III, 727-728.)

18. On August 31, 1945, the CIO requested and obtained the discharge of six employees pursuant to the closed shop agreement. (R. III, 806-807; R. II, 654-656.)

19. On September 1, 1945, the CIO conducted a wholesale inspection of employees' union dues books at the plant. (R. III, 681-682; 709-713.)

20. On August 31, 1945, and prior to the dues checking incident above referred to, a minor official of the CIO came to petitioner's labor relations manager and requested the suspension of a long list of employees, and stated, in support of his request, that the persons involved were in bad standing, that some of them had not paid their dues and that others were not members of the CIO. Petitioner's representative refused to accede to this request and took up the matter with another official of the CIO. (R. III, 728-732.)

21. On the day following the dues book checking incident, that is, September 1, 1945, petitioner's representatives received a letter from the CIO requesting removal from the job of nineteen employees under the terms of the collective bargaining agreement and advising that the persons named therein were no longer in good standing. (R. III, 792-793; R. I, 315). Petitioner complied with this demand, but prior to doing so it requested information from the CIO as to the reason behind the suspension of these employees and the CIO's reply to this inquiry was that these persons had violated their oath, the constitution and the by-laws of the CIO. (R. III, 736.)

22. Shortly after September 1, 1945, four more employees were dismissed pursuant to demands made by the CIO under the terms of the closed shop contract. One was discharged on September 5th, two on September 7th, and the fourth on September 11, 1945. (R. I, 50 and Note 20; R. II, 806-807; R. II, 654-656.)

23. Subsequent to their discharge, the five stewards, the four committeemen and the other twenty-eight employees were tried before CIO rank and file tribunals. The transcript of the proceedings before the CIO tribunals and their decisions were received in evidence. (R. III, 877-922; 923; 987; 856; 866; 867-876; R. III, 771; 779.)

24. The four committeemen and the five stewards refused to stand trial and were tried *in absentia* on October 3, 1945. On October 10, 1945 they were found guilty and expelled. They had been charged with dereliction of duty, failure to enforce the policy against racial discrimination and participation in a strike during the war. (R. I, 52-53; R. III, 856-866; 877-922.)

25. On October 16, 1945, an election of bargaining representatives was held at the plant and pursuant to the decision and direction of election issued by the Board on September 26, 1945. (R. II, 549.) At this election the majority of votes was cast in favor of the CIO, notwithstanding the fact that most of the discharged employees voted. (R. II, 550-551.)

26. Sometime in November, 1945, the CIO informed petitioner of the action taken with respect to the four committeemen and the five stewards. (R. I, 154; R. III, 741-742; 762.)

27. On December 17, 1945, the remaining twenty-eight employees who were members of the CIO were tried by the CIO. (R. III, 923-987.) Some of them withdrew after having participated in the preliminary

portions of the trial. (R. III, 924; 930-935.) The ones who remained, eventually entered a plea of guilty and admitted that they had engaged in a prohibited strike. (R. III, 969-976.) On December 24, 1945 the trial committee issued its decision recommending the expulsion of the employees who failed to stand trial and that the employees who pleaded guilty be placed on probation. (R. III, 867-876.)

The proceedings had before the Board and the United States Court of Appeals for the Ninth Circuit subsequent to the occurrence of the above narrated events can be summarized as follows:

1. The Board issued its complaint on January 18, 1946 (R. I, 4-10) pursuant to charges preferred against petitioner by the A.F.L. (R. I, 1-4.) The complaint charged, in substance, that petitioner had interfered with the rights guaranteed the employees by Section 7 of the National Labor Relations Act (29 U.S.C.A. 157) and had committed unfair labor practices in violation of Section 8 of the same Act (29 U.S.C.A. 158), in discharging and threatening to discharge employees and refusing to reinstate them because of their membership in and activity on behalf of the A.F.L. and the Association and because of their failure or refusal to join or assist the CIO. The petitioner's answer denied certain allegations of the complaint and set forth the closed shop provision of the contract pursuant to which it acted. Its answer also set forth that some of the employees had been suspended and expelled by the CIO because of violations

of its constitution and its policy against wartime strikes. (R. I, 10-16.)

2. A hearing was had on the matter from February 4 to February 6, 1946, at San Francisco, California, before a Trial Examiner duly appointed by the Board. (R. I, 21.)

3. On March 27, 1946 the Trial Examiner issued his Intermediate Report and recommended therein that the complaint as a whole be dismissed. (R. I, 17-68.) The Trial Examiner found that under the facts it was impossible for petitioner to determine whether the CIO had suspended the discharged employees for such valid reasons as their resignation from the CIO, and their participation in the strike, or because of their activities on behalf of the A.F.L., and the Association. He also found, in this connection, that the petitioner could have ascertained the "true" motivation of the CIO only by intruding into the internal affairs of that Union, in violation of the National Labor Relations Act. (R. I, 61-65.)

4. On September 6, 1946, the Board issued its decision and order overruling the recommendation of the Trial Examiner (R. I, 68-83), and found that petitioner had discharged and refused to reinstate the employees in violation of Section 8(1) and (3) of the Act. (29 U.S.C.A. 158(1) and (3).) The order issued by the Board pursuant to said decision requires petitioner to offer immediate and full reinstatement to the discharged employees and to make them whole for any loss of pay suffered as a result of their discharge.

(R. I, 81-82.) The Board, in making its decision, applied the doctrine developed by it in *Matter of Rutland Court Owners*, 44 N.L.R.B. 587. The substance of the principle enunciated by the Board in that case is that an employer cannot properly discharge employees pursuant to the closed shop provisions of a contract when, to his knowledge, the discharge is requested by the contracting Union for the purpose of eliminating employees who have sought to change bargaining representatives at a period when it is appropriate for the employees to seek a redetermination of representatives. The Board presumed, inasmuch as petitioner had information indicating that the motive of the CIO *might* have been reprisal against the employees because of their advocacy of the A.F.L., that the petitioner had, in fact, knowledge of this alleged discriminatory motivation. (Analysis, Sept. 23, 1946, 18 L.R.R. 85, 86-87.) The Board also found in this connection that petitioner "made no bona fide effort to evaluate all the evidence before it" when it contended that it could not determine the CIO's "true" motivation. (R. I, 78-79.)

5. On December 30, 1946, petitioner filed its petition for review of the Board's decision and order in the United States Court of Appeals for the Ninth Circuit. (R. I, 101-126.) On February 3, 1947, the Board filed its answer to petitioner's petition, requesting the denial thereof and enforcement of the Board's order. (R. I, 134-144.)

6. On January 13, 1949, the Court of Appeals rendered its opinion and judgment affirming the decision

of the Board. (R. IV, 990-992.) The Court stated in its opinion that the "evidence abundantly supports" the following findings of ultimate facts made by the Board:

(a) That the CIO sought to use the closed shop contract for the purpose of punishing the insurgents; and

(b) That petitioner acceded to the discharge-demands notwithstanding it knew that the Union had suspended the men in reprisal for their activities in favor of the rival Union. (R. IV, 992; 171 F. (2d) 956, 957.)

In affirming the Board's decision, the Court of Appeals approved for the second time the principle established by the Board in *Matter of Rutland Court Owners*, 44 N.L.R.B. 587, and stated that its approval of this principle in *Local No. 2880 v. N. L. R. B.*, 158 F. (2d) 365, controlled in the present case. (171 Fed. (2d) 956, 957.)

Petitioner, for the reasons hereinafter stated, seeks the reversal of the judgment of the Court of Appeals for the Ninth Circuit.

SPECIFICATIONS OF ERROR.

The Circuit Court of Appeals erred:

1. In holding that Congress intended, in enacting the National Labor Relations Act of 1935, that discharges made pursuant to a valid closed shop contract should in themselves constitute unfair labor practice.

2. In holding that Congress intended, in enacting the National Labor Relations Act of 1935, that the Board should have the power to regulate employees and labor organizations.

3. In holding that Congress intended, in enacting the National Labor Relations Act of 1935, to prohibit the coercion of employees by employees or labor organizations.

4. In holding that Congress intended, in enacting the National Labor Relations Act of 1935, to empower the Board to protect recalcitrant Union members from their Union's discipline.

The order of the Court allowing certiorari states that the petition therefor "is granted, limited to the question of the construction of Section 8(3) of the National Labor Relations Act of 1935 in relation to this case." (R. IV, 999.) In compliance with the Court's order, we have abandoned Specifications of Error numbered 5, 6 and 7 set forth in our brief in support of the petition at pages 40 and 41 thereof.

SUMMARY OF ARGUMENT.

The decision and order affirmed by the Court of Appeals is based on the premise that Congress intended, in enacting the National Labor Relations Act of 1935, to prohibit and make wrongful the coercion of employees by bona fide labor organizations. The truth of this premise is essential to the validity of the Board's decision, otherwise the Board's order depriv-

ing the CIO of its contract rights and petitioner of its property would be an arbitrary exercise of power. This premise is false. The express language of the Act and its congressional history furnish ample proof of its falsity. The decision of the Court of Appeals is, therefore, erroneous and in conflict with the applicable decisions of this Court.

ARGUMENT.

The Question Presented.

Under the terms of the order of this Court allowing certiorari, the question presented here is whether the construction given by the Board to the proviso to Section 8 (3) of the National Labor Relations Act of 1935 is valid.

The construction given by the Board to this Section of the Act is generally referred to as the *Rutland Court* doctrine.

The doctrine was evolved by the Board to overcome difficulties in the administration of the Act created by the competition between the American Federation of Labor and the Congress of Industrial Organization.

The Development of the Rutland Court Doctrine and the Argument in Support of its Validity.

The Act expressed two policies which seemed inconsistent. Section 7 guaranteed employees freedom in selecting, by majority vote, representatives for collective bargaining. The proviso to Section 8 (3), on the other

hand, allowed the making of closed shop contracts, thus substantially impairing the guarantee contained in Section 7. The construction given by the Board to the Act in this and other cases was an attempt to reconcile the seeming conflict between the two policies.

Section 7, prior to its amendment, provided as follows:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choice and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." (29 U.S.C.A. 157.)

Section 8 (3) read as follows:

> "It shall be an unfair labor practice for an employer—
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *provided* that nothing in Sections 151-166 of this Title, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in Sections 151-161 of this Title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 159 (a) of this Title, in the appropriate collective bargaining unit covered by such agreement when made." (29 U.S.C.A. 158 (3).)

The Board first gave serious consideration to the problem apparently created by these two sections of the Act in 1939 in its decision in the *Matter of Ansley Radio Corporation*, 18 N.L.R.B. 1028. The employer in that case had entered into a closed shop contract with an AFL Union. While the contract was still in effect, a majority of the employees engaged in a campaign to replace the AFL Union with one affiliated with the CIO as bargaining representative. During the course of the campaign, two employees were discharged by the employer on his own initiative, because, as the Board found, of their activities on behalf of the CIO. (18 N.L.R.B., supra, 1042-1044.) Thereafter, as a result of the disruption occasioned by the warfare between the two Unions, the employer stopped production and laid off all of the production employees, including a group of fifteen who had resigned from the AFL and had become members of the CIO. (18 N.L.R.B., supra, 1046-1047.) When the effects of the dispute had been somewhat dissipated, production was resumed, but the employer in compliance with the closed shop contract, and the demands of the AFL thereunder, re-employed only those who remained members of the AFL or who had rejoined it in the interim. The fifteen employees who resigned from the AFL and joined the CIO, as well as the two who had been previously discharged, were refused employment. (18 N.L.R.B., supra, 1048-1051.) The employer was subsequently charged by the Board with the commission of unfair labor practices.

The Board's decision of the matter disclosed sharp disagreement among its members. Mr. J. Warren

Madden and Mr. Edwin S. Smith concurred in holding that the discharge of the two employees because of their advocacy of the CIO was discriminatory and constituted a violation of the Act. They ruled that a "closed shop" contract, so long as membership in the contracting union was maintained, did not require "abstention from talk and advocacy of change in affiliation as a condition of employment." (18 N.L.R.B., supra, 1042-1043.) Mr. William M. Leiserson, the third member of the Board, did not agree with this ruling, and in a very brief dissent said (18 N.L.R.B., supra, 1070):

> "I am of the opinion that the entire proceedings should be dismissed".

Mr. Madden, with the tacit concurrence of Mr. Leiserson, held that because of the closed shop agreement, the employer had been justified in laying off and refusing to re-employ the fifteen employees who had resigned from the AFL, and had, therefore, in this respect committed no unfair labor practice. The reasoning employed by Mr. Madden is summarized in the following quotation from his opinion:

> "The freedom guaranteed employees under the Act to form, join, and assist labor organizations and to bargain collectively through representatives of their own choosing, without economic or other compulsion by the employer, is qualified by the proviso clause of Section 8 (3). The legislative history of this clause as well as its language shows that its purpose was to leave undisturbed by the Act, except in two instances, a form of industrial relationship which had won increasing acceptance by employers and had found widening

approval in the law of the several States. The legislative intent and policy were to withhold what rights individual employees otherwise might have had under the Act but for the proviso, in order to permit organized labor to seek and enter into this relationship where the employer was willing to do so and local law offered no obstacle.

Although the employees who withdrew from the Brotherhood were a majority of the employees in the unit and had designated another labor organization as their collective bargaining representative it cannot be said that by virtue thereof the immunity accorded the respondent by the proviso clause ceased under the Act and in consequence the respondent's refusal to reinstate was violative of the statute. If the Congress had intended to limit in this manner a relationship which it sanctioned under the Act and to impose a responsibility upon the employer for failure to recognize the limitation, certainly such limitation would have been express. There is no express limitation in the Act that the proviso is applicable only so long as the contracting union maintains its majority. The proviso clause declares that 'nothing in this Act' shall preclude an employer from 'making' a closed-shop agreement with a labor organization 'if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.' Although the proviso relates specifically only to the *making* of the agreement, the necessary implication is that the employer is protected against a charge of discrimination under Section 8 (3) in *carrying out* the closed-shop

agreement as made, at least where, as here, the agreement is for a reasonable period of time."

It should be noted that Mr. Madden would permit the employer to be protected by the proviso "at least where * * * the agreement is for a reasonable period of time." This is important because it marks the beginning of the Board's policy with respect to "time appropriate for a redetermination of bargaining representatives" in unfair labor practice cases.

Mr. Smith did not agree with the views expressed by Mr. Madden on this aspect of the case. His dissenting opinion discloses that he placed the emphasis on the statutory right of the majority to freely choose bargaining representatives, and that he would not permit the employer to be protected by the proviso even when the agreement was for a reasonable period if the majority within that time determined upon a change of representatives. (18 N.L.R.B., supra, 1066-1070.)

We may fairly infer from Mr. Leiserson's brief and laconic opinion that he only concurred in the result achieved through Mr. Madden's opinion and that he would have afforded the protection of the proviso to the employer at any time while the closed-shop agreement was in force, regardless of the reasonableness of its duration. This inference, we believe, finds valid support in events hereinafter noted.

In 1942, some three years after the *Ansley* decision, the Board again had occasion to consider this problem in *Matter of Rutland Court Owners, Inc.*, 44 N.L.R.B. 587. By that time, the personnel of the Board had

changed. Of the group that had decided the *Ansley* case, only Mr. Leiserson remained. Mr. Madden and Mr. Smith had left the Board and their places had been taken by Mr. Harry A. Millis and Mr. Gerard D. Reilly. Mr. Millis and Mr. Reilly decided in the *Rutland* case that the proviso to Section 8 (3) of the Act did not permit or require the employer to comply with the "closed-shop" provisions of a contract when, *to his knowledge,* discharges pursuant to the contract were sought and obtained by the contracting Union as a penalty for rival Union activities *carried on during a period when it was appropriate for the employees to seek redetermination of representatives.* In so holding, the Board determined the conduct of the employer had been illegal. On the basis of this determination, the Board deprived the Union of its contract rights and the employer of its property through an order requiring the employer to reinstate the discharged employees with back pay.

In this case the majority of the Board gave a liberal construction to Section 7 and a very narrow one to the proviso to Section 8 (3). The substance of the argument in support of the majority opinion was stated as follows:

> "A contrary construction would in large part nullify the statutory scheme by which questions concerning the representation of employees are to be determined by the Board, using the machinery created for that very purpose under the Act. Since the contract here in question was about to expire, according to established Board policy the time was appropriate for a change of repre-

sentatives, if the employees so desired. The Board, under such circumstances, would normally direct an election to resolve the question concerning representation and determine whom the employees currently desired as their exclusive representative. The discharge of the very employees whose representation is in issue, because they have placed their representation in question, is clearly inconsistent with the whole policy and general scheme of the Act.

The A. F. of L. Local, in its argument, recognizes that were its views to prevail the strike would be the only weapon remaining to the employees who wished to transfer their affiliation to the CIO Local immediately prior to the negotiation of a new contract. That the Act was designed to avert industrial strife, however, is clear beyond dispute. The Act contemplates that if self-organization is protected and collective bargaining by genuine employee representatives is encouraged, then collective bargaining contracts will result which will stabilize industrial relations and hence be conducive to industrial peace. The view advocated by the respondent and the A. F. of L. Local is inconsistent with this basic policy. To insist that employees can never transfer this affiliation from one union to another, or to prevent employees toward the close of one contract period from changing their representatives for the purpose of negotiating and administering a new contract for the succeeding term is to impair rather than protect self-organization, to thwart rather than encourage collective bargaining by representatives of the employees' genuine choice, and accordingly to produce contracts which will not tend

to stabilize mutually satisfactory labor relations or safeguard industrial peace. The stability intended by the Act is not that involved in a perennial suppression of the employees' will."

The foregoing discourse discloses the Board's laudable purpose but we do not find there or elsewhere in the opinion the answer to the most important question involved. The contract was made with a Union "not established, maintained or assisted by any action defined * * * as an unfair labor practice" and, in addition, the discharges were requested and obtained while the contract was still in effect. It is clear, therefore, that the conditions precedent imposed by the Act to validate such contracts were fully complied with by the parties, and, what is more, no contention was ever made that the contract was invalid. Under such circumstances, the question immediately arises as to the Board's power to deprive a bona fide Union of its contract rights and to interfere in the conduct of its internal affairs, while administering a statute aimed solely at the unfair labor practices of employers. Or, to express it in another way, from whence is derived the power of the Board to terminate such contracts by a condition subsequent not specified in the Statute? The Board has never furnished an answer to this question.

Mr. Leiserson, who, as we have seen, would have given an employer the protection of the proviso to an employer at all times during the existence of a valid closed-shop contract with a bona fide union, dissented. His dissenting opinion is sufficiently brief and im-

portant to our position to be quoted in full. It is as follows:

> "There is no contention in this proceeding that the closed-shop contract of 1939 is invalid. The discharges were made pursuant to the terms of that contract and are therefore within the terms of the proviso to Section 8 (3) of the Act. To reach a contrary result the majority has in effect assumed authority to suspend enforcement of the provisions of a valid collective bargaining agreement although this Board has previously held that it was not permitted to do so. If valid closed-shop contracts, which are expressly permitted by the Act, have undesirable effects, it is for the Congress, and not for the Board, to make the modifications. I would dismiss the complaint."

The exceptions implicit in the Board's announced policy or doctrine are exemplified in *Matter of Southwestern Portland Cement Co.*, 65 N.L.R.B. 1, and in *Matter of Diamond T. Motor Car Company*, 64 N.L.R.B. 1225. In the first case, the Board held that the contracting Union could request and obtain the discharge of an employee as punishment for activity on behalf of a rival organization when such activity took place at a time not appropriate for a redetermination of representatives. In making this determination, the Board ruled that the conduct of the Union was not wrongful and that the employer acted legally, even though he had knowledge of the Union's motivation in requesting the discharge. In the second case, the contracting Union sought and obtained the discharge of an employee in retaliation for his activity

on behalf of another organization at a time when it was appropriate to seek a redetermination of representatives, but the Board dismissed the complaint because it found that the employer had no knowledge of the Union's "wrongful" motivation. It will be noted that when the employer had no knowledge of the Union's motivation, the Union retained its contract rights, notwithstanding its alleged wrongful conduct.

The basic inconsistency of this approach to the problem led Board member Mr. James J. Reynolds, Jr. to express a vigorous dissent in *Matter of Lewis Meier & Company*, 73 N.L.R.B. 520. We quote a portion of his dissent as follows:

> "My colleagues seek to remedy the discriminatory treatment of the employees here involved by compelling the respondent company to offer the said employees reinstatement and make them whole for loss of pay suffered as a result of the discrimination. The rationale for this decision is that the respondent's compliance with the closed-shop provision of its contract with the A. F. L. comprised an unfair labor practice because it was aware that the A. F. L. had deprived Baker, Hurst, and Kelly of their membership in the A. F. L. and had demanded their discharge because of their activity on behalf of the CIO. The inescapable impact of this reasoning is that had the respondent not been aware of this fact the Board would have dismissed the complaint, confessing impotence to offer the slightest impediment to such vicious violation of rights supposedly guaranteed employees under the Act. Thus, in the *Diamond T. Motor Car Company* case, an unaffiliated union holding a closed-shop

contract with the company expelled certain employees from its rank because of their efforts on behalf of another union affiliated with the American Federation of Labor, and requested successfully that the company discharge them in accordance with the terms of the collective bargaining contract. The Board, lacking what it in that case considered substantial evidence that the company knew of the discriminatory and illegal motive impelling the independent's expulsion of the employees from its organization, dismissed the complaint, concluding apparently that under such circumstances the free exercise of the employees' choice as to their representation is tantamount to a risk rather than a right."

An examination of the various cases in which the Board has applied the knowledge test discloses interesting variations. Where the employer has some information, not amounting to actual knowledge, that the discharges are requested as punishment for dual unionism, he commits an unfair labor practice if he complies with the request, without having first questioned Union members and officers as to the reasons underlying the discharge demand. (*Matter of Durasteel Company*, 73 N.L.R.B. 941, 945.) The fact that such questioning would be interference and a gross violation of the Act does not daunt the Board. In this, and other cases where the employer has knowledge of several reasons, including dual unionism, which could cause the contracting union to demand the discharge, the employer must presume that the demand would not be made except for the employee's dual unionism,

and, if under the circumstances the employer fails to reject the demand, then the Board conclusively presumes that the employer knew that the discharge was solicited as a reprisal against the dual unionist. (*Matter of Colgate-Palmolive-Peet Company*, 70 N.L.R.B. 1202, 1208; *Matter of Durasteel Company*, supra, 73 N.L.R.B. 941, 943; "Analysis", 18 L.R.R. 85, 86-87.) It is evident that under these presumptions of knowledge any recalcitrant union member may place himself beyond the reach of the contracting Union's discipline merely by making manifest his hostility to it as bargaining agent.

In applying this policy, the Board has held that in cases involving a contract for a definite term, it is appropriate to seek a redetermination of representatives near the end of the contract term (*Matter of Kimberly-Clark Corp.*, 61 N.L.R.B. 90, 92-93) and in the case of contracts having automatic renewal clauses within a reasonable time prior to the automatic renewal date. (*Matter of Mill B. Inc.*, 40 N.L.R.B. 346, 351.)

The Board states that the policy thus evolved by it represents its considered judgment as to how the conflict between the general guarantee of Section 7, which permits employees to choose and change representatives, and the limitations imposed by the proviso to Section 8 (3), which permits discipline of employees in the interests of Union security and a stability of bargaining relationship, may most reasonably be reconciled so that the legitimate scope of each may be preserved without nullifying the other. (Brief for the Board before the Court of Appeals, 31.) There is, of

course, implicit in this statement the assumption that Congress intended such reconciliation of alleged conflicting policies despite the statute's complete silence on the subject of Union motivation, employer knowledge and time appropriate for a redetermination of representatives.

In considering the validity of the *Rutland Court* doctrine, it should be borne mind that the question is whether the Board has the power to suspend contracts which were valid at their inception and have remained valid, and that the question is not whether the Board has the power to declare invalid contracts which were void *ab initio*. The power of the Board to declare invalid contracts which were void *ab initio* has been sustained by this Court in *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248, 89 L.Ed. 216, and in other cases. We submit that the reasoning of these cases is not applicable to contracts which are not entered into for the express purpose of discriminating against some of the employees. (*Owens-Illinois Glass Co. v. N.L.R.B.*, 176 F. (2d) 172, 175-6.)

The Rutland Court Doctrine in the Courts of Appeals.

The Board's policy has found acceptance in the Courts of Appeals for the Second, Third and Ninth Circuits. It has been approved in the Second Circuit in the cases of *N.L.R.B. v. American White Cross Laboratory*, 160 F. (2d) 75, *Colonie Fibre Co. v. N.L.R.B.*, 163 F. (2d) 65, and *N.L.R.B. v. Geraldine Novelty Co.*, 173 F. (2d) 14; in the Third Circuit in the case of *N.L.R.B. v. Public Transport Service Co.*, 24 L.R.R.M. 2466 (Sept., 1949); in the Ninth Circuit

in *Local 2880, etc. v. N.L.R.B.*, 158 F. (2d) 365, and in this case, which was decided on the authority of *Local 2880,* supra. On the other hand, this policy or doctrine has been rejected by the Court of Appeals for the Seventh Circuit in the cases of *Aluminum Company of America v. N.L.R.B.*, 159 F. (2d) 523, and *Lewis Meier & Co. v. N.L.R.B.*, 21 L.R.R.M 2093, 13 Labor Cases, Par. 64163.

Local 2880, etc. v. Board: The Rationale of the Rutland Court Doctrine.

The Courts of Appeals for the Second and Third Circuits have not in any of the cases decided by them given or attempted an explanation of how it is possible for the Board, under a statute which has reference only to the unfair practice of employers, to deprive a bona fide Union of its contract rights. Such an explanation has been attempted by the Court of Appeals for the Ninth Circuit in *Local 2880,* supra.

This was an excellent case for the purpose, as none of the essential facts were in dispute and these, granting the validity of the doctrine, fulfilled every condition necessary to its application. There, the employer had entered into a closed shop contract with an AFL Union on May 3, 1940. This contract contained a clause providing for automatic renewal unless notice of modification or termination was given by either party prior to May 3rd of each succeeding year. The contract was automatically renewed on May 3, 1944, for an additional year. On April 1, 1944, a CIO Union filed a petition, under Section 9 (c) of the Act, which resulted in the Board ordering an election of repre-

sentatives. This election was held on June 23, 1944. The AFL, the contracting union, won the election. During the course of the election, Wilmarth, an employee, and member in good standing of the AFL, acted as an observer for the CIO. Thereafter, Wilmarth was tried by the AFL on charges of having assisted the rival organization and expelled on the basis of these charges. After his expulsion he was discharged at the request of the AFL. The employer knew at or about the time it discharged Wilmarth that he had been expelled from the AFL because of his activities on behalf of the CIO and that there was no other reason for his discharge (158 F. (2d) supra, 366-8). The employer was subsequently found by the Board to have violated Section 8 (3) of the Act, and on the strength of this finding he was ordered to reinstate Wilmarth with back pay. It was never contended either before the Board or the Court of Appeals that the closed shop contract was invalid, but the Court nevertheless sanctioned the Board's suspension or termination of this valid contract. The Court of Appeals in so doing expressed the rationale of the Rutland Court doctrine in the following proposition:

> A labor organization which so coerces an employee as to cause him to exercise the rights guaranteed by Section 7 *in terrorem of discharge is ineligible* to become or remain a party to the closed shop contract, and a discharge by an employer pursuant to a contract vitiated by the ineligibility of the coercing Union is assistance of the type defined by the Act as an unfair labor practice (158 F. (2d) 368, 369).

The Court, as can be seen, considers the coercion exercised by the Union a condition subsequent which terminates or suspends the contract.

The Court in permitting the Board to declare a Union ineligible to become or remain a party to a contract, in effect, authorizes the regulation of Unions by the Board, and in permitting the Board to prohibit the performance of a closed shop contract, because it results in the coercion of employees by labor organizations, it in effect empowers the Board to prohibit Unions from coercing employees.

The reasoning of the Court of Appeals depends for its validity on the truth of the premise that a labor organization which coerces employees "is ineligible to become a party to a closed shop contract", and this premise itself must depend for its validity on the assumption that Congress intended to make illegal or "wrongful" the coercion of employees by other employees or labor organizations. The assumption that Congress intended to forbid the coercion of employees by labor organizations is an essential prerequisite, otherwise the Board's order affecting the Union's rights under the contract and depriving the petitioner of its property, would be entirely without support and would constitute an arbitrary exercise of power.[2]

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[2] "We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside."

Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 233, 83 L.Ed. 126, 142.

"Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations."

Consolidated Edison Co. v. N.L.R.B., supra, 305 U.S. 235, 83 L.Ed. 143.

The Board's Defense of the Rationale of the Rutland Court Doctrine.

The excellent briefs filed by the AFL prior to decision did not set forth certain Congressional Reports which accompanied the adoption of the Wagner Act and which clearly showed that Congress, in enacting this statute, did not intend thereby to prevent the coercion of employees by labor organizations or to empower the Board to regulate the affairs of bona fide labor unions. After decision and on petition for rehearing, the AFL did forcefully call attention to one of these Reports, but the Court, although it wrote a short opinion on denial of the petition, failed to address itself to the arguments which the AFL based on this Report. (158 F. (2d) supra, 370.)

When this case was before the Court of Appeals we repeated with some elaboration the arguments which the AFL had made.

We stated in substance that the rationale of the doctrine could be sustained only on the assumption that the Wagner Act had been intended to make it an unfair labor practice on the part of the labor union to coerce employees. We pointed out that the Act was exclusively and expressly aimed at the unfair labor practices of employers, that it specifically sanctioned the closed shop and that the prohibition against union unfair practices could not be inferred or implied inasmuch as the Congressional reports clearly showed a contrary intent. We concluded, from these premises, that since a Union's conduct in soliciting a discharge under the terms of a closed shop contract had not been

made wrongful by Congress, that such request was lawful, and, further, that the employer's compliance therewith could not constitute an unfair labor practice under the Act.

In defense of the rationale laid down by the Court of Appeals and in answer to our argument, the Board said:

> "The employer's argument is predicated upon the mistaken premise that because the Board was unable, prior to the amendments to the Act, to reach the contracting union's discriminatory conduct in requesting the discharge of rival union adherents under a closed-shop contract, the Board was equally powerless to reach the employer's discriminatory conduct in acceding to the contracting union's discharge demands notwithstanding the employer's knowledge of the union's discriminatory purpose. The contention fails to perceive and distinguish between the contracting union's *wrongful act* in requesting the discharge of rival union adherents, on the one hand, and the employer's own wrongful act in acceding to the discharge demands, on the other. The controlling factor is the employer's answerability for its own misconduct in discriminating against employees. The employer's responsibility is not minimized or extinguished because of lack of power to reach the contracting union's independent *wrongdoing*." (Italics ours.) (Brief for the Board before the Court of Appeals, 34-5.)

Wrongful Union Conduct: The Board's False Major Premise.

In making the above quoted argument, the Board admits that it did not have the power to interfere in the government of bona fide labor unions, yet despite this admission it effectively regulated and frustrated the disciplinary measures adopted by them for their protection, through orders directed at employers. In this fashion, it also impaired the obligations of valid contracts as effectively as if it had been expressly empowered by the statute to do so. The Board when questioned as to its authority to interfere with organizations which Congress deliberately placed beyond its reach, blandly answers that it is not exercising its powers against them and is merely enforcing the Act's prohibitions against the illegal conduct of the employer. Since the alleged illegal conduct of the employer consists in performing a contract which is expressly permitted by the statute, one is quite naturally impelled to ask wherein lies the illegality of the employer's acts. To this the Board replies that it is "wrongful" for the contracting union to demand a discharge as penalty for the exercise of the rights guaranteed by Section 7, and that when the employer complies with such a "wrongful" demand, he in turn is guilty of wrongdoing. We reject as invalid the proposition that a contract is rendered unenforceable by the fact that one of the parties has knowledge that the other by means thereof intends to violate some law or public policy (53 A.L.R. 1364, 1366; *People v. Brophy*, 49 Cal. App. (2d) 15, 30-1, 120 Pac. (2d) 946, 954-5), but even if its validity were to be conceded, we

would, in the absence of express Congressional pronouncement, still be entitled to ask why such a demand by a union should be characterized as wrongful. In answer to this, the Court of Appeals and the Board would reply that such a demand is a "wrongful attempt to defeat the Congressional purpose to democratize the employees' organization by a free election of their bargaining agent." (*Local No. 2280, etc. v. N.L.R.B.*, supra, 158 Fed. (2d) 365, 370.) We gather from this that the Court of Appeals and the Board contend that union interference with the declared policy of the United States to protect the exercise by workers of full freedom of association, self-organization and designation of representatives set forth in Section 1 of the Act[4] and implemented by Sections 7 and 8 (29 U.S.C.A. 1, 7 and 8) is wrongful, and, therefore, subject to indirect restraint by the Board through orders issued against the employer. This contention is not novel. A similar one based on the declarations of policy set forth in the Norris-La Guardia Act[5] (29

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[4] "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection." (29 U.S.C.A. 151.)

[5] "Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to

U.S.C.A. 102) and the Wisconsin Labor Code (St. Wis. 1933, Sec. 268.18)* was put forth in *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323, 82 L. Ed. 872.

In that case the respondent argued that since the Federal and the Wisconsin statutes declared that employees should have full freedom of association, self-organization, and designation of representatives, it was wrongful for the union to coerce it to require its employees to join the union.

The Court of Appeals for the Seventh Circuit was persuaded by the contentions of the respondent, and having in mind the expressed public policy, gave it precedence and held that inasmuch as the union activity involved interfered with the individual working man's freedom of association, self-organization and designation of representatives of his own choosing, such activity was unlawful and should be enjoined. In so holding, the Court of Appeals said:

> "* * * The controversy, rather, seems to be a unilateral one with the sole object of coercing appellee to compel its employees to join the appellant union, in order that it may represent the em-

decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or any self-organization or any other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted." (29 U.S.C.A. 102.)

*The State policy was substantially the same as the national policy expressed in the Norris-La Guardia Act.

ployees in their dealings with the employer. Appellants seek to accomplish that result by picketing and damaging the employer's business. But, under the Norris-LaGuardia Act and the Wisconsin Labor Code, it would amount to a violation of both the federal and state law if appellee complied with appellants' demands, for under those laws the employer is specifically enjoined from influencing his employees in their choice of a union or their representative. The employees have refused to join the appellant union, they have organized their own union and have selected their own representative without interference or participation of their employer, and their rights in these respects are as fully protected by the laws as are those of appellants.

The declared public policy of both the nation and State of Wisconsin establishes the substantive rights of appellee's employees which the courts will protect by injunction, though no specific provision therefor be contained in either Act. Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U.S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; Trustees of Wisconsin State Fed. of Labor v. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N.W. 56. It being unlawful for appellee to dictate to its employees what organization they should join, or what representative they should select, and likewise unlawful to refuse to recognize the agency which they had selected, and recognize another representative which they had rejected, it follows that appellants' demand upon appellee was unlawful."

Lauf v. E. G. Shinner & Co., 82 Fed. (2d) 68, 72.

The Court of Appeals, like the Board, sought to protect the rights of the individual workers from union interference, although the statutes involved did not contain any provision authorizing such action. The Board is in no better position because the National Labor Relations Act gives it no power to restrain the coercive activities of unions. As can be seen, the Court of Appeals and the Board have both attempted to infer such authority from the statements of policy contained in the statutes.

This Court, when the case came before it, held that these declarations of policy could not limit the definition of non-enjoinable "labor dispute" set forth in the Norris-La Guardia Act, and that, therefore, the issuance of an injunction was not authorized. This Court said:

> "The Court of Appeals erred in holding that the declarations of policy in the Norris-La Guardia Act and the Wisconsin Labor Code to the effect that employees are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint or coercion of their employers, puts this case outside the scope of both acts since respondent cannot accede to the petitioners' demands upon it without disregarding the policy declared by the statutes. This view was expressed in the court's first opinion on the appeal from the issue of an interlocutory injunction, and the opinion on the appeal from the final order adopts what was said on the earlier appeal as the law of the case. We find nothing in the declarations of policy which narrows the definition of a

labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined."

Lauf v. E. G. Shinner & Co., 303 U.S. 330, 82 L. Ed. 877, 878.

For the purposes of this litigation, it should be noted that under the Norris-La Guardia Act, a case was held to involve or grow out of a labor dispute when "the case involves any conflicting or competing interests in a 'labor dispute' * * * of 'persons participating or interested' therein * * *" (29 U.S.C.A. 113(a)), and that the term "labor dispute" was said to include "any controversy concerning terms or conditions of employment, or concerning association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee". (29 U.S.C.A. 113(c).) It seems to us too clear for argument that the controversy between the competing unions in this case falls squarely within the definition of a non-enjoinable labor dispute set forth in the Norris-La Guardia Act. It is, therefore, submitted that the board has indirectly done in this and other cases what the District Courts of the United States were forbidden to do under the terms of the Norris-La Guardia Act. That interference by the board in such a labor dispute is entirely unauthorized and impossible to justify by

the mere application of the epithet "wrongful" to the conduct of the contracting union is patent on the authority of *United States v. Hutcheson,* 312 U.S. 219, 85 L.Ed. 788, where this Court said:

> "The Norris-La Guardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act. *In this light Section 20 removes all such allowable conduct from the taint of being a 'violation of any law of the United States', including the Sherman Law."* (Italics ours.)
>
> *United States v. Hutcheson,* 312 U.S. 236, 85 L.Ed. 795.

On the basis of the foregoing we submit that, even though it were true that the National Labor Relations Act had no history or background to guide us with respect to the Congressional intent, there can be no justification for inferring from its terms the illegality of conduct which the Norris-La Guardia Act expressly made lawful. Mr. Justice Butler, dissenting, in *Lauf v. E. G. Shinner & Co.,* supra, characterized the object sought to be achieved by the union as "morally indefensible" (303 U.S. 333, 82 L.Ed. 878), and the Board no doubt views the conduct of the CIO in this case in the same light, and one must concede that these opinions are shared by many, but even this would not authorize the inference of wrongful union conduct which the board seeks to draw from the Act, and the reason for this appears to us to be obvious. The question of the legality or wrongfulness or morality or immorality of the competitive tech-

niques employed by labor and capital, including the "yellow dog" contract, and its counterpart, the closed shop contract, have been the subject of perhaps a century of controversy and of countless conflicting judicial decisions, but nevertheless there still exists a division of opinion on these matters. That this should be so is not surprising as these are matters involving many and conflicting views on economic problems and neither the contending groups nor the Courts could be expected to agree on a common economic theory. The resolution of these conflicts and the choice of a prevailing economic doctrine appear, therefore, to be political matters, to be determined by the Legislature within the limits set by the Constitution. It is for this reason that this Court has held that these are matters to be determined by the clear pronouncements of the State Legislatures or Congress and that they should not be made to depend on the varying economic preferences of the Courts. (See concurring opinion of Mr. Justice Frankfurter in *American Fed. of Labor v. American Sash & Door Co.*, 335 U.S. 538, 543-57, 93 L.Ed. Ad. Ops. 209, 211-19.) It appears to us obvious that the Board has in this case determined the issues in accordance with its economic views, and has, therefore, failed to exercise the self-discipline necessary to the proper performance of its quasi-judicial function.

We have mentioned above the Congressional Reports which accompanied the adoption of the Wagner Act and we have likewise made passing reference to its history. We will show hereinafter that even if

it were proper to draw the inference that Congress intended to make wrongful the coercive use by unions of the closed shop contract when it enacted this statute, that such inference cannot be sustained in the face of the mass of direct evidence furnished by these Reports and other sources establishing a contrary intent.

The Congressional history of the closed shop proviso to Section 8(3) of the Act is detailed in *Algoma P. & V. Co. v. Wis. Emp. Rel. Bd.*, 336 U. S. 301, 306-11, 93 L. Ed. Ad. Ops. 541, 546-8, and for this reason it appears unnecessary to recount it in this brief. It is important to note, however, that there is nothing in this history which gives the slightest support to the contention that Congress intended to authorize the Board to suspend or terminate valid closed shop contracts when and if the contracting union interfered with the employees' right to choose representatives. At this point it is also desirable to state that this Court's division of opinion in the *Algoma* case, supra, on the question of whether the Wagner Act authorized the closed shop or merely evidenced a Congressional disclaimer not to interfere with it where it was permitted by state law is of no moment in this case, as such contracts were and are legal and enforceable in California. (*Levy v. Superior Court*, 15 Cal. (2d) 692, 104 Pac. (2d) 770; *Montalbo v. Hires Bottling Co.*, 59 Cal. App. (2d) 642, 139 Pac. (2d) 666; Cal. Labor Code, Section 1126.) It also seems appropriate while on the subject of California law to show that in California judicial decision has legalized that most

coercive features of the closed shop contract. The Supreme Court of California accepted the principles of *Allen v. Flood*, App. Cas. (1898) H. of L. 1, in 1908, some ten years after that case was decided by the House of Lords (*Parkinson Co. v. Building Trades Council*, 154 Cal. 581, 595, 98 Pac. 1027, 1032-3, 21 L.R.A. (N.S.) 550, 558). *Allen v. Flood*, supra, as is well known, stands for the proposition that it is legal for a labor organization to seek to obtain a monopoly, and that for this purpose it may properly coerce the employees who do not join with it or oppose it. Attempts have been made to infringe upon this proposition by contending that the public policy of California, expressed in Sections 921 and 923 of the California Labor Code, prohibits interference by unions with the working man's rights to join or not to join a labor organization, and these contentions have been invariably rejected by the California Courts. (*Park & T. I. Corp. v. Int. etc. of Teamsters*, 27 Cal. (2d) 599, 609-12, 165 Pac. (2d) 891, 897-9, 162 A. L. R. 1426, 1433-5.) The California Courts have departed from the principles of *Allen v. Flood*, supra, only in cases where the closed shop is coupled with an arbitrarily closed union. (*Williams v. International Brotherhood of Boiler Makers*, 27 Cal. (2d) 586, 591-2, 165 Pac. (2d) 903, 905-6.) But they have in so doing also adopted the Restatement's view that it is not unreasonable for a union not to retain as a member one who engaged in activities antagonistic to it or is a member of a rival organization. (*James v. Marinship Corp.*, 25 Cal. (2d) 721, 736, 155 Pac. (2d) 329,

338; *Davis v. International Alliance, etc. Employees,* 60 Cal. App. (2d) 713, 714-15, 141 Pac. (2d) 486, 488, Rest. Torts, Comment b to Section 810.)

The foregoing resume demonstrates that the California law is in conflict with the Rutland Court doctrine. No doubt the Board could argue now as it has done in the past that the local law must yield to the Board's version of the Federal law where the two cannot stand together. (Brief for the Board before the Court of Appeals, 65.) This argument, however, has been rendered invalid by this Court's assertion in the *Algoma* case, supra, that the Wagner Act did not change the status of closed shop agreements in the States where these were lawful. (336 U.S. 310, 93 L.Ed. Ad. Ops. 546-7.)

The Congressional Reports and other historical sources furnish ample evidence of the fact that Congress was fully aware that in California and other jurisdictions unions were permitted to coerce employees by means of the closed shop contract when it determined in enacting the Wagner Act not to interfere with this relationship. These sources also furnish evidence that Congress knew full well that unions could by the coercive use of these contracts perpetuate themselves in power and that notwithstanding this knowledge, it determined not to limit the duration of these agreements or to prevent their coercive use.

As the starting point for our proof of the matters above mentioned, we will take Section 7(a) of

the National Industrial Recovery Act (15 U.S.C.A. 707(a)), which may well be termed the predecessor of the Wagner Act. Friends of labor feared because of statements made by public officials in charge of the administration of the Recovery Act that this Section would be interpreted so as to deprive labor of the right to use the closed shop as a competitive weapon and that the Courts would, on the basis of the policy expressed by these officials, refuse to enforce closed shop agreements and abandon the *laissez faire* policy in disputes between rival unions. ("Labor Injunctions Since the N.R.A.", 43 Yale L. Jour. 625, 632-633.)

To allay these fears and to make it clear that unions were not to be put in a worse position than they were before the Recovery Act was passed, Senator Wagner offered new labor legislation in the Senate under the name "Labor Disputes Act" on March 1, 1934. In proposing this new legislation, he said:

> "The new legislation which I am proposing does not dictate any policy as to the closed union shop. That is a problem which labor must work out for itself. But the Bill does make it clear that Section 7(a) was not intended to place employees in a worse position than they were before the Recovery Act was passed." (78 Cong. Rec. 3443.)

It is interesting to note that Senator Wagner had considered the advisability of limiting the duration of closed shop contracts to provide, as has the Board, for a "time appropriate for a redetermination of

representatives". Section 5(6) of the Labor Disputes Act had a proviso which read as follows:

> "* * * *Provided, further,* that nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employer's employees, *and if the said agreement does not cover a period in excess of one year.*" (Italics ours.) 78 Cong. Rec. 3443.

It is notable that the Board by an administrative ruling, incorporated into the National Labor Relations Act of 1935 the limitation proposed by Senator Wagner. (*Matter of Detroit & Cleveland Navigation Co.*, 29 N.L.R.B. 176, 179-180.) However, the obviously reasonable and sensible limitation suggested by Senator Wagner was omitted in the Senate Committee's revision of the proposed legislation. We note, therefore, from the foregoing that by the time the hearings before the Committee on Labor were held during the first quarter of 1935 on the proposed Wagner Act that those concerned with the legislation knew of the abuses which could occur in the event no provision was made in the Act either to prevent the coercion of employees by labor organizations or to provide for a period appropriate for a redetermination of bargaining representatives. With all of this clearly in mind, both Senator Wagner and Mr. Harry A. Millis, later Chairman of the National Labor Rela-

tions Board, testified in opposition to any legislation which would forbid coercion by others than employees. On this subject, Senator Wagner stated the following:

> "*It has been claimed that in order to be fair, the bill should prohibit employees and labor organizations, as well as employers, from coercing employees in their choice of representatives.* This argument rests upon a misconception of the needs which give rise to this measure. Violence and intimidation by either employers or workers are adequately prevented by the common law and do not require special treatment. This measure deals with the subtler forms of economic pressure. *Such pressure cannot be exerted by employees upon one another to an extent justifying congressional action.* But it can be directed against a worker by an employer who controls his job. It is this latter evil which has grown to a magnitude requiring a new public remedy. Furthermore, many courts have defined the term 'coercion' to embrace all strikes or picketing, no matter how justifiable. They have drawn a line between legal and illegal coercion. *Thus to prohibit employees from coercing their own side would not merely outlaw the undesirable action which the word connotes to us, but would make the result reached in the loudly condemned Hitchman Coal Case,* 245 U. S. 229 (1917), *the law of the land.* It would defeat the very freedom of self-organization which the bill is designated to protect. All legislation strives not for an abstract or proper equality but for conditions which will produce actual equality in the light of concrete facts." (Italics ours.) (Hearings before

the Senate Committee on Education and Labor, March 11, 1935, page 47.)

The testimony of Mr. Millis was in substantial agreement with that of Senator Wagner. He said:

> "As a matter of logic, the bill should prohibit labor organizations from coercing employers in the self-organization of employer associations, as they have sometimes done in cooperation with these associations. That is unnecessary, however, for it is unlawful. *Coercion of labor by labor alone needs discussion.*
>
> Employers and their agents, and organized workers coerce and interfere in rather different ways. Enthusiastic union members and union agents may coerce workers in four ways: First, by physical violence; second, by threats of violence; third, by use of approbrious names; *fourth by unionization through pressure of the closed union shop.* There is abundant State and municipal law against actual and threatened violence and against the use of epithets and approbrious names. *Frequently, the closed union shop, especially if it would involve discharge of employees for nonmembership in a union, is under the ban of state law. It is evident that it is the thought of the drafters of this bill not to interfere with state law upon the subject.* This, I think, is desirable. The closed union shop is likely to cease to be an issue and practically to disappear when active employer opposition to organization and collective bargaining and discrimination against union men cease. That is the conclusion to be properly drawn from British and other foreign experience." (Italics ours.) (Hear-

ings before Senate Committee on Education and Labor, March 18, 1935, p. 179.)

It will be noted that both Senator Wagner and Mr. Millis recommended that questions involving the coercive use of the closed shop should be left for determination to the State Courts and that the Federal Government should not interfere in this matter.

The Senate Report which accompanied the adoption of the National Labor Relations Act, stated clearly, in language which closely paralleled that used by Senator Wagner and Mr. Millis, that in adopting this legislation there was no intent on the part of Congress to forbid the coercion of employees by labor organizations. We refer the Court in this connection to the following taken from this Report:

"There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute 'coercion': A threat to strike; a refusal to work on material of nonunion manufacture; circularization of banners and publications; picketing; even peaceful persuasion. In some courts, closed shop agreements or strikes for such agreements are condemned as 'coercive.' *Thus, to prohibit employees from 'coercing' their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticised injunctions issued by the courts of equity against activities of labor organizations, ghosts*

which it was supposed Congress had laid low in the Norris-LaGuardia Act.

Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police-court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence, or threats of violence. (See 29 U.S.C. sec. 104 (3) and (i).)

Racketeering under the guise of labor-union activity has been successfully enjoined under the antitrust laws when it affected interstate commerce. The latest case along these lines is United States v. Local No. 167 et al. (291 U.S. 293.)

In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excite-

ment statements are not made on both sides which, in the hands of hostile or unsympathetic courts, might be construed to come under the common law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7(a) of the National Industrial Recovery Act was up for discussion, and when the 1934 amendments to the Railroad Labor Act were before the Congress. In neither instance did they command the support of Congress." (Italics ours.) (See Senate Reports, Vol. 9877, 74th Cong. 1st Sess., R. 573, to accompany S. 958, May 2, 1935, at page 16.)

The above quoted Senate Report was incorporated in the Report of the House Committee on Labor, (Rep. No. 1147 of House Committee on Labor, June 10, 1935, 74th Cong. 1st Sess., pages 15 to 17.)

In view of the positive and unambiguous declaration of Congressional intent contained in the above quoted material, it seems to us that there can be no doubt that the "Congressional purpose to democratize the employees' organization by a free election of their bargaining agent", was to be achieved through elections free from employer interference, not elections free from Union coercion. This one-sided approach to the problem was the basic and the much

criticized defect of the Wagner Act. (Teller, "Labor Disputes in Collective Bargaining", Vol. Two, 695; Magruder, "A One-Half Century of Legal Influence upon the Development of Collective Bargaining", 50 Harv. L. Rev. 1071, 1108-10.)

The problems and abuses which were to result from this defect were not then entirely foreseeable. It is common knowledge that when the Act was drafted and adopted that the schism in the labor movement which culminated in open warfare between the AFL and CIO, had not occurred, and was not anticipated. Therefore, Congress had no reason to provide in the Wagner Act a remedy for evils which might arise as a result of the then not foreseen breach in the ranks of labor. At the time this legislation was enacted, it was thought that the contest would be between organized labor, on the one side, and employers, non-union employees and company dominated "employee representation plans" masquerading in the guise of so-called "independent unions", on the other. (Gregory, "Labor and the Law", 246 (W. W. Norton & Company, New York, 1946).) Therefore, employees were, under this Act, not to be free to remain unorganized or free from concerted union activities to organize them. The freedom or democratization intended was only freedom from employer autocracy. Those who drafted the Wagner Act knew as the above quoted report discloses, that employers had been only too anxious to outlaw the "closed shop" contract as coercive and too prone to attempt to defeat the organization of their employees by pretending to be

the protagonists of the non-union men's right to remain unorganized. It may have been inadvertence on the part of Congress not to foresee that a rival as strong as the CIO would compete with the AFL, but certainly there was no inadvertence in not prohibiting or in not making wrongful the coercion of employees by labor organizations. (Gregory, op. cit., 317.)

The *Rutland Court* doctrine, we must conclude in view of the evidence, was a device invented by the Board with the laudable purpose of mitigating the abuses which resulted from the competition between the AFL and the CIO, but the Board's good intentions should not blind us to the fact that this was legislation by administrative fiat and entirely contrary to the intent and purpose of Congress. For the Board to declare a union ineligible to become or remain party to the closed shop contract and to deprive it of its contract is, in effect, *regulation* by the Board of labor organizations, and such regulation of labor organizations, the Senate Report tells us, is not "germane to the purpose of" the National Labor Relations Act. To prohibit the performance of a "closed shop" contract because it results in the coercion of employees by labor organizations is, in effect, "to prohibit" employees and unions "from coercing their own side" and this prohibition, it is clear, was not intended by Congress. Congress having expressly and emphatically declared that it did not intend to regulate unions, and having expressly defined and denounced in the Act itself only the unfair labor practices of employers, there is, we submit, no reason for inferring such

a regulation or such a prohibition as the Court of Appeals has done in the case of *Local No. 2880, etc. v. N.L.R.B.*, supra. Further evidence of Congressional intent not to prohibit the coercion of employees by labor organizations is to be found in the fact that Congress in enacting "The Labor Management Relations Act, 1947" did specifically prohibit such coercion.

The Wagner Act generally, and Section 8 thereof in particular, have been radically amended by the Labor Management Relations Act, 1947. The changes wrought in the pertinent sections of the Wagner Act by these amendments cannot be validly described as "clarifications". Such amendments give rise to a presumption of change, not clarification. (Sutherland, "Statutory Construction" (3rd Ed.), Sec. 1930, 412-16.)

The Board's position is that under the Wagner Act it had power to regulate labor unions by declaring them ineligible to be parties to a "closed shop" contract when the unions committed the unfair labor practice of coercing their members in the exercise of the rights guaranteed by Section 7 of said Act. The Board maintains that the Act so provided, and it follows that it would be unreasonable and unnecessary to "change" the Act for the purpose of inserting a provision which already existed therein. Section 8 (b) (1) and (2) of the new Act provides in part as follows:

> "(b) It shall be an *unfair labor practice for a labor organization or its agents*——

(1) *to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title*: * * *

(2) *to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section* or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * *"

29 U.S.C.A. 158 (b)(1)(2).

Here we have for the first time in express language a statutory prohibition against the coercion of employees by other employees or labor organizations. Was it necessary to make a "change" to express what already was law?

The Conference Report of the House accompanying the adoption of the Labor Management Relations Act, 1947, furnishes ample proof of the fact that change, not clarification, was the desired objective. We find that the Act was to be "two-sided", no longer "one-sided".

"In amending section 1 of the National Labor Relations Act (the policy thereof) the House bill omitted from the present law all of the so-called findings of fact, some of which have been so severely criticized as being inaccurate and *entirely one-sided*. The Senate amendment rewrote the findings and policies contained in section 1 of the National Labor Relations Act so that those findings will not hereafter constitute an indict-

ment of all employers. At the same time the Senate amendment inserted in the findings of fact a paragraph to the effect that experience has demonstrated that certain practices by some labor organizations have the effect of burdening commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of commerce. The Senate amendment further declared the elimination of such practices to be a necessary condition to the assurance of the rights herein guaranteed. Thus under the Senate amendment the findings and policies of the amended National Labor Relations Act are to be *'two-sided.'* The conference agreement adopts the provisions of the Senate amendment in this respect." (Italics ours.)

H.R. Report No. 510, 80th Congress 1st Session, 30-1.

We also find that Congress knew that under the old Act an employee was not free from being coerced into a union, and the new Act changes the situation so that now he is free to remain unorganized.

"The *second change* made by the House bill in section 7 of the act (which is carried into the conference agreement) also has an important bearing on the kinds of concerted activities which are protected by section 7. That provision, as heretofore stated, provides that employees are also to have the right to refrain from joining in concerted activities with their fellow employees if they choose to do so."

H.R. Report No. 510, 80th Congress 1st Session, 39-40.

The report shows that in defining in the new Act, the unfair labor practices of unions, Congress was "adding" to the Act. We submit that there is no necessity for adding anything to a statute if it is already there.

> "Both the House bill and the Senate amendment amended section 8 of the National Labor Relations Act by *adding thereto unfair labor practices on the part of labor organizations.*" (Italics ours.)
>
> H.R. Report No. 510, 80th Congress 1st Session, 40.

The present and past history of the Act outlined above makes it clear that no inference of wrongful union conduct can be drawn from the provisions of the original version. This establishes that the major premise of the Board's argument is false.

It is also clear that since such conduct was not culpable that there was no cause or reason for declaring the ineligibility of a union as a party to a "closed shop" contract and to deprive it of its contractual rights. This being so, it follows that the second or minor premise of the Board's argument is also false.

It is likewise patent, that if there has been no vitiating conduct that when a discharge is made by an employer pursuant to a "closed shop" contract, a labor organization *is not*, as the Board and the Court of Appeals conclude, " 'assisted by * * * action defined in Section 8(1) as an unfair labor practice' in viola-

tion of the express language of the proviso" to Section 8(3).

Moreover, if there has been no assistance given to the union by the employer through any unfair labor practice, the contract is valid under the proviso and both the union and employer may insist on its performance.

We submit that the foregoing establishes that the rationale of *Local 2880, etc., v. N.L.R.B.*, supra, the basis of the decision in this case, is invalid. These decisions are attempts to remedy demonstrated defects in existing legislation by judicial fiat. This Court has consistently held that the removal of such defects is within the exclusive province of the legislature and that Courts and administrative tribunals exceed their powers when they attempt it. It is, therefore, submitted that the decision of the Court of Appeals approving the Board's construction of Section 8(3) of the Act is in conflict with the following applicable decisions of this Court:

Addison v. Holly Hill Fruit Products, 322 U. S. 607, 88 L.Ed. 1488;

Iselin v. U. S., 270 U.S. 245, 70 L.Ed. 566;

Manhattan G. E. Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 80 L.Ed. 528;

Koshland v. Helvering, 298 U.S. 441, 80 L.Ed. 1269;

Electric Storage Battery Co. v. Shimadzu, 307 U.S. 5, 83 L.Ed. 1071;

Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 84 L. Ed. 656;

Helvering v. Credit Alliance Corp., 316 U.S. 107, 86 L. Ed. 1307;

Helvering v. Sabine Transp. Co., 318 U.S. 306, 87 L.Ed. 773.

We feel certain that the Board will, despite the fact that all arguments in favor of its contentions have been overcome, attempt to support its position on this Court's decision in *Wallace Corporation v. N.L.R.B.*, supra, and in anticipation of this possibility we respectfully urge that this Court refrain from extending the rationale of that case beyond the factual situation which this Court had before it. Valid reasons for so restricting the application of the ruling in the *Wallace* case are given by the Court of Appeals for the Seventh Circuit in the recent case of *Owens-Illinois Glass Co. v. N.L.R.B.*, supra, where the following is stated:

> "While the decision in the Wallace case has been dissected by the parties in their briefs almost line by line, we see no reason to do likewise. Notwithstanding that the rationale of the Wallace case places a heavy, if not unfair, burden upon an employer charged with the duty of bargaining in good faith with a properly certified bargaining agent relative to a union-shop agreement, the holding must be accepted. At the same time, according to our view, its rationale should not be extended beyond the precise situa-

tion which the court had before it, and this particularly in view of the emphatic dissenting opinion joined in by four justices of the court.

It is true, as emphasized by the company here, that the court in the Wallace case had before it an extreme situation, wherein it appears that the company and the union deliberately entered into a contract for the express purpose of enabling both the company and the union to accomplish what they both desired, that is, to get rid of certain employees who were members of a rival union. In fact, the union with whom it contracted was a company-dominated union. As the court stated, 323 U.S., at page 256, 65 S. Ct. at page 242, 89 L.Ed. 216: 'It was as much a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with Independent as it would have been had the company done it alone. To permit it to do so by indirection, through the medium of a "union" of its own creation, would be to sanction a readily-contrived mechanism for evasion of the Act.'

While the facts in the Wallace case are a far cry from those of the instant case, yet we think the Wallace case stands for the proposition that a contract entered into between a company and a union, with knowledge on the part of the former that it is to be used by the latter as a means of doing away with members of a rival union, is invalid."

The analysis of the *Wallace* case made by the Court of Appeals for the Seventh Circuit discloses that the

basic problem which confronted this Court was that of a closed shop contract, coupled with an arbitrarily closed Union, a problem not unlike the one resolved by this Court in *Steele v. Louisville & Nashville R. R. Co.*, 332 U. S. 192, 89 L. Ed. 173. This problem is not encountered in the instant case. The record makes it clear that this is not a case where the employer has entered into a contract with knowledge of a Union's intent to deal unfairly with employees who are unreasonably denied membership. To the contrary, it must be assumed in this case, on the basis of the record, that the contract was entered into by the Petitioner with every expectation that the CIO would not use it to deal unfairly with any of its members.

This being a case involving merely a situation where an employer has in good faith performed a valid contract which complies with all the conditions precedent expressly required by the statute, it appears to us not unreasonable to ask this Court to hold that the Board has acted in excess of its powers. The penalty imposed upon petitioner is fundamentally unfair. It is not reasonable to expect, in the absence of express and specific statutory command, that Petitioner's representatives should have become aware of the expert subtleties and refinements implicit in the *Rutland Court* doctrine and its application to varied factual situations.

We submit, therefore, that the order of the Board in this case is not remedial but punitive and arbitrary, and that for this reason the judgment of the

Court of Appeals for the Ninth Circuit affirming it should be reversed.

Dated, San Francisco, California,
October 21, 1949.

Respectfully submitted,
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(Appendix Follows.)

Appendix

Section 151. *Findings and declaration of policy.*

* * * * * * *

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. July 5, 1935, c. 372, Section 1, 49 Stat. 449.

Section 152. *Definitions.*

When used in sections 151-166 of this title—

* * * * * * *

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

Section 157. *Right of employees as to organization, collective bargaining, etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. July 5, 1935, c. 372, Section 7, 49 Stat. 452.

Section 158. *Unfair labor practices by employer defined.*

It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any

labor organization: *Provided,* That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective barbaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under sections 151-166 of this title.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. July 5, 1935, c. 372, Section 8, 49 Stat. 452.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 47

COLGATE-PALMOLIVE-PEET COMPANY, *Petitioner*,

v.

THE NATIONAL LABOR RELATIONS BOARD, ET AL., *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONER.

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SUBJECT INDEX.

	Page
Preliminary Statement	1
The Steele and Wallace Cases Are Authority for the Proposition that the Statutory Bargaining Agent is Under the Duty of Exercising Its Powers Fairly and Impartially on Behalf of All the Employees It Represents When Dealing With An Employer in Respect to Conditions of Employment. The CIO When It Suspended the Discharged Employees and Requested and Obtained Their Dismissal Was Not Acting as Such a Statutory Bargaining Agent, Nor Was It Exercising Any Right Granted or Protected by the Wagner Act. Therefore, the Principles of the Wallace and Steele Cases Are Not Applicable Herein	2
The Case of Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 Law Ed. 789, is Not Authority for the Proposition that the Controversy Involved Herein Is Not Within the Terms of the Norris-LaGuardia Act	8

TABLE OF AUTHORITIES CITED.

CASES.

Algoma P. & V. Co. v. Wis. Emp. Rel. Bd., 336 U. S. 301, 93 L. Ed. Ad. Ops. 541	6
Davis v. International Alliance, etc. Employees, 60 Cal. App. (2d) 713, 141 Pac. (2d) 486	6, 7
James v. Marinship Corp., 25 Cal. (2d) 721, 155 Pac. (2d) 329	6
N.L.R.B. v. Dadourian Export Corporation, 138 F. 2d 891	2, 7
Lauf v. E. G. Shinner & Co., 303 U. S. 323, 82 L. Ed. 877	8
N.L.R.B. v. Glueck Brewing Co., 144 F. 2d 847	6
Steele v. Louisville & Nashville Railroad, 323 U. S. 192, 89 L. Ed. 173	2, 3, 4, 5, 6
Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 877	8
Wallace Corporation v. N.L.R.B., 323 U. S. 248, 89 L. Ed. 216	2, 3, 4, 5, 6

STATUTES.

Page

National Labor Relations Act:

Section 7 ..... 1, 7, 8
Section 8(3) 1
Section 9 7
Section 9(c) 7, 8
Section 12 8

Railway Labor Act:

Section 2, Ninth

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REPLY BRIEF FOR PETITIONER.

Preliminary Statement.

We will not attempt, because of the limited time available, to make a full and complete answer to the contentions of the Board. We will confine ourselves to showing that the Board has not been able to prove the truth of the major premise of the proposition for which it contends.

The Board's argument is based on the premise that the CIO's discharge demands were wrongful and illegal. On the basis of this premise, the Board argues that the Petitioner's compliance with these demands was equally wrongful and violates sections 7 and 8(3) of the National Labor Relations Act. (29 U.S.C.A. 157,158(3). It requires no elaboration to show that the wrongdoing of the Petitioner

is entirely dependent upon the wrongdoing, if any, of the CIO.

The Board attempts to prove that the conduct of the CIO was wrongful on the basis of the doctrines enunciated by this Court in the cases of *Steele* v. *Louisville & Nashville Railroad*, 323 U.S. 192, 89 L.Ed. 173, and *Wallace Corporation* v. *NLRB*, 323 U.S. 248, 89 L.Ed. 216. The doctrine of these cases requires that a statutory bargaining agent perform its duties in good faith and without discrimination.

The Board's theory regarding the alleged wrongdoing by the CIO is entirely based on these cases and on the case of *NLRB* v. *Dadourian Export Corporation*, 138 Fed. (2d) 891. It will be our endeavor in this brief to show that these cases do not prove the Board's point.

It will likewise be our endeavor to show that our ancillary argument, based on the provisions of the Norris-LaGuardia Act (29 U.S.C.A. 101 et seq.), has not been proven false by the Board.

The Steele and Wallace Cases Are Authority for the Proposition that the Statutory Bargaining Agent is Under the Duty of Exercising Its Powers Fairly and Impartially on Behalf of All the Employees It Represents When Dealing With An Employer in Respect to Conditions of Employment. The CIO When It Suspended the Discharged Employees and Requested and Obtained Their Dismissal Was Not Acting as Such a Statutory Bargaining Agent, Nor Was It Exercising Any Right Granted or Protected by the Wagner Act. Therefore, the Principles of the Wallace and Steele Cases Are Not Applicable Herein.

It is the contention of the Board that it was wrongful for the Petitioner to acquiesce in the discharge demands of the CIO because the conduct of CIO was wrongful. In furtherance of this contention the Board argues that when the CIO requested and obtained the dismissal of the employees it was acting in its capacity as statutory bargain-

ing representative and was under the doctrine of the *Steele* and *Wallace* cases required to exercise the powers vested in it by force of statute fairly and impartially on behalf of all employees including those who were bent upon supplanting it with another organization. The trouble with the Board's argument is that the CIO was not acting in its capacity as statutory bargaining agent when its alleged illegal acts were committed.

In the *Steele* case the Brotherhood was dealing with the employer with respect to conditions of employment when it negotiated and entered into the contract whereby the negro firemen lost their jobs, and was, therefore, acting in its capacity as statutory agent. This was likewise true of the Independent in the *Wallace* case, when it consummated the contract whereby former members of the CIO were deprived of their employment. And same can be said of the CIO when it entered into the contract here in question on July 9, 1941, with the exception that the Board concedes that this agreement was valid and without taint at its inception. (Brief for the Board, 48.)

The exception above noted marks the distinction between this and the *Steele* and *Wallace* cases. The principle of the *Steele* and *Wallace* cases is that the granted and protected right to act as exclusive representative of all employees in the unit, craft or class for the purposes of collective bargaining with an employer must be exercised fairly and impartially on behalf of all employees represented. The contracts executed by the Independent and the Brotherhood were intended to and did unreasonably discriminate against some of the employees represented and to that extent the Independent and the Brotherhood abused their statutory powers as exclusive bargaining representatives. On the other hand the agreement negotiated by the CIO was not intended to and did not exclude of any of the employees represented, and therefore the CIO fully complied with its statutory duty. The arbitrary exercise of power by the Brotherhood and the Independent rendered the contracts negoti-

ated by them void ab initio. The contract here in question did not suffer from this infirmity because the CIO fulfilled all the statutory requirements.

The distinction between the cases becomes more marked when it is noted that the Brotherhood and the Independent bargained with the employer in their capacity as statutory agents to exclude some of employees represented from employment and that the CIO did not bargain at any time as statutory agent or otherwise for the exclusion from employment of any of the employees it represented. The primary and fundamental cause of the loss of jobs in the *Steele* and *Wallace* cases were the contracts made by the Brotherhood and Independent while acting as statutory bargaining agents. In this case, however, the fundamental and primary cause of the loss of employment was not the collective bargaining agreement, nor any action taken by the CIO as exclusive bargaining agent. The primary cause of the discharges in this case was the constitution and by-laws of the CIO, and the CIO's requests therefor under the terms of the contract were not made by it as statutory agent of the employees.

The constitution and by-laws of a union are generally regarded as a contract setting forth the rights and liabilities of the members as between themselves as well as with the union. All of the Petitioner's employees, including those who were dismissed at the request of the CIO, freely chose to join the union in order to obtain employment at the Petitioner's plant, and we are entitled to assume that they accepted the constitution and by-laws of the CIO as the measure of their rights and obligations. In so accepting the constitution and by-laws of the CIO they agreed in the first instance to submit to the jurisdiction of the CIO in matters involving the right to maintain membership therein. Their loss of standing in the union does not stem from the making or the performance of the closed shop provisions of the contract, but from the contractual obligations which they undertook when they joined the CIO. The constitution and by-laws of the CIO mentioned in footnote 66, page 82 of

the Board's brief, required all those joining it to be and remain loyal members of the CIO. The CIO determined that the discharged employees violated its by-laws and constitution and for this reason declared them to be in bad standing, subject to a trial to be held at a later date to determine whether or not they were guilty of the charges made against them. After this preliminary proceeding the Petitioner was informed of their suspension and was requested to perform the conditions of the closed shop contract by removing these employees from the payroll. It seems to us, therefore, that the fundamental or basic cause of the loss of jobs was not the closed shop contract, but the contract between the discharged employees and the CIO.

The foregoing amply demonstrates that it was not a discriminatory contract between the union and the employer which was the cause of the employee's discharge, thus distinguishing this case from the *Steele* and *Wallace* cases, but a contract between the union and its members, freely entered into, and whose provisions apparently were applicable without discrimination to all members.

It also seems plain to us that in determining through its procedures that the discharged employees were in bad standing, and in requesting their discharge, the CIO was not acting in its capacity as statutory representative. For the same reason, it seems equally clear to us that in performing these acts, the CIO was not doing anything which had any connection with any of the ordinary subjects of collective bargaining, such as rates of pay, wages, hours or other conditions of employment. In so removing some of its members from good standing, and in eventually terminating their membership, the CIO, through its duly appointed representatives, was performing within its organization a quasi-judicial function, which is not granted created or protected by statute. We believe that the Board will agree that up to this point the CIO's conduct was not wrongful under the provisions of the National Labor Relations Act, and that it was not up to this point acting in its capacity as statutory bargaining agent. The Board, how-

ever, will contend that in requesting the enforcement of the closed shop contract against these employees, the CIO was acting in its representative capacity and was invoking a right granted and protected by statute, and with this we do not agree.

Under the National Labor Relations Act enforcement of a collective bargaining agreement is granted only incidentally and in connection with orders aimed at the prevention of unfair labor practices, as was the case in *N.L.R.B.* v. *Glueck Brewing Co.*, 144 F. 2d 847, where the employer refusal to perform a valid closed shop contract resulted in favoring one union over another. This Court in a recent case stated that the term unfair labor practice "is not a term of art having an independent significance which transcends its statutory definition." (*Algoma P. & V. Co.* v. *Wisconsin Emp. Rel. Bd.*, 336 U. S. 301, 305, 93 L. Ed. Ad. Ops. 541, 545.) We submit that there is nothing in the definitions of unfair labor practice contained in the act which would include a refusal to perform a collective bargaining agreement when such refusal is not incidental or connected with some unfair labor practice. It is, therefore, clear that the right to have the contract in the instant case enforced was not a right granted or protected by statute. Accordingly, when the CIO solicited and obtained the discharge, under the contract, of the employees whose membership had been suspended it was not exercising any power granted by statute, and in addition it was not bargaining with the Petitioner with respect to conditions of employment—it was merely requesting the performance of a bargain made four years before. It is, therefore, submitted that the *Steele* and *Wallace* cases are not applicable herein, and that for this reason the CIO did nothing illegal in exercising the right it has under California law of expelling and terminating the employment of members who engaged in activities antagonistic to it and who joined a rival organization. (*James* v. *Marinship Corp.*, 25 Cal. (2d) 721, 736, 155 Pac. (2d) 329, 338; *Davis* v. *International Alliance, etc. Em-*

ployees, 60 Cal. App. (2d) 713, 714-15, 141 Pac (2d) 486, 488; Rest. Torts. Comment b to Section 810.)

In addition to the cases above discussed the Board relies on the case of *National Labor Relations Board* v. *Dadourian Export Corporation*, 138 F. 2d 891 to support its contention that the CIO's conduct herein was wrongful. (Brief for the Board, 86-7.) The argument made in connection with this case is not based on the alleged arbitrary exercise of a statutory power, but on an inferred general prohibition against interference by anyone, including labor organization, with the rights guaranteed by Section 7 of the National Labor Relations Act. We submit in answer to this argument that the conclusion reached by Judge Learned Hand in the *Dadourian* case is correct but that the premise on which it is based is erroneous. Judge Hand by his decision in effect set aside an election of representatives by refusing enforcement of a Board order which would have compelled the employer to bargain with a union which the Board had certified as majority representative after the election. The facts disclosed by the opinion show that the votes necessary to insure a majority for the union had been obtained by fraud and violence on the part of the union. Judge Hand determined that these acts constituted a wrongful invasion of the rights guaranteed by Section 7 of the Act and on this ground set the election aside. We believe that if these acts of fraud and violence had been unconnected with the performance of a Board function authorized by Section 9 of the Act the conclusion reached by Judge Hand would have been erroneous. We have already shown that the Act does not protect employees from coercion, fraud or violence inflicted upon them by other employees or labor organizations (Brief for Petitioner, 45-63), but in the case under discussion what was involved was interference by a union with the performance of the Board's duties by means of fraud and violence inflicted upon employees, and such interference is expressly prohibited by the Act. Section 9 (c) of the Act casts upon

the Board the duty of making an investigation whenever a question concerning the representation of employees arises and the Board may for the purposes of this investigation take a ballot of employees, or utilize any other suitable method to ascertain their choice (29 U.S.C.A. 159(c)). Section 12 of the Act makes it a criminal offense punishable by fine and imprisonment for any person, and this term includes a union, to interfere with the Board in the performance of its duties. (29 U.S.C.A. 162.) We submit, therefore, that the conclusion and results achieved by Judge Hand can be justified because of the union's criminal action, but may not be justified, as the Board contends, on an inferred prohibition against interference by unions with the rights guaranteed to employees by Section 7 of the Act.

The Case of Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 Law Ed. 789 is Not Authority for the Proposition that the Controversy Involved Herein Is Not Within the Terms of the Norris-La Guardia Act.

The case of *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515, 81 Law Ed. 789 has been used by the Board in an attempt to defeat the argument which we based *Lauf* v. *E. G. Shinner & Co.*, 303 U.S. 323, 82 Law. Ed. 877, and on the Norris-LaGuardia Act. (29 U.S.C.A. 101 *et seq.*) The Board relies on the following language found in the *Virginian* case:

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Section 2, Ninth, of the Ry. Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." (300 U.S. 563, 81 Law. Ed. 808.)

It is apparent from the very language on which the Board relies that the subsequent enactment of the Railway Labor Act removed a dispute over an employer's refusal to bar-

gain collectively with the representative of his employees from the coverage of the Norris-LaGuardia Act, and that for this reason the provisions thereof were not an obstacle to the injunction issued by the District Court. Here, however, we have a controversy between two groups of employees which admittedly falls within the definition of a labor dispute set forth in the Norris-LaGuardia Act, and since Congress did not see fit in enacting the National Labor Relations Act to place such disputes outside of terms of the earlier statute it is apparent that the language on which the Board relies has no bearing on the present case. We, therefore, submit that under the terms of the National Labor Relations Act the Board has no right or power to interfere with or restrain the conduct of either of these groups through orders directed at the employer.

Respectfully submitted,

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
I. The Board's findings of fact	3
A. The closed-shop agreement between the employer and the C.I.O.	4
B. The employees' dissatisfaction with the C.I.O. and the preliminary steps taken by them to change representatives	4
C. The employer, knowing the C.I.O.'s discriminatory purpose, accedes to the C.I.O.'s request to discharge the stewards and the committeemen for their leadership of the rival union activities	5
D. The employer, knowing the C.I.O.'s discriminatory purpose, accedes to the C.I.O.'s request to discharge the twenty-eight additional employees for their rival union activities, and refuses to reemploy the stewards and the committeemen	11
1. Further steps taken to change bargaining representatives and the ensuing campaign	11
2. The refusal to reemploy the stewards and the committeemen on August 17	12
3. The C.I.O. request for the discharge of seventy employees on August 30	13
4. The discharge of six employees on August 31	14
5. The discharge of eighteen employees on September 1	15
6. The discharge of four employees on September 5, 7, and 11	16
E. The C.I.O.'s subsequent trial of the discharged employees	16
II. The conclusions and order of the Board	17
III. Proceedings in the court below	19
Argument	19
Conclusion	34
Appendix	35

AUTHORITIES CITED

Cases:	Page
American Packing Corporation, Matter of, 82 N. L. R. B., No. 117	22
Atlantic & Pacific Tea Company, Matter of, Case No. 2-CA-349	23
Burwell's Admr's v. *Fauber*, 21 Gratt. 446	24
Chase Candy Company, Matter of, Case No. 14-CA-172	23
Compressed Air Workers Union, Local 147 Matter of, Case No. 2-CB-117	23
Detroit Gasket and Manufacturing Co., Matter of, 79 N. L. R. B., No. 83	22
Eaton Manufacturing Co., Matter of, 76 N. L. R. B. 261	22
Giboney v. *Empire Storage & Ice Co.*, No. 182, this Term, decided April 4, 1949	31
Hamilton v. *National Labor Relations Board*, 160 F. 2d 465, certiorari denied, *sub nom. Kalamazoo Stationery Co.* v. *National Labor Relations Board*, 322 U. S. 762	30
Hamilton-Scheu-Walsh Shoe Company, Matter of, 80 N. L. R. B., No. 234	22
Hammond Lumber Company, Matter of, Case No. 21-C-3104	22
International Detrola Corporation, Matter of, Case No. 7-CA-90	23
Interstate Engineering Corporation, Matter of, 83 N. L. R. B., No. 16	22
Lewis Meier & Company v. *National Labor Relations Board*, 21 L. R. R. M. 2093 (November 3, 1947)	21
Lincoln Federal Labor Union v. *Northwestern Iron and Metal Company*, 335 U. S. 525	32
Local No. 2880 v. *National Labor Relations Board*, 158 F. 2d 365, certiorari granted, 331 U. S. 798, certiorari dismissed on motion of petitioner, 332 U. S. 845	20
National Electric Products Corporation, Matter of, 80 N. L. R. B., No. 151	22
National Labor Relations Board v. *American White Cross Laboratories, Inc.*, 160 F. 2d 75	21
National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U. S. 240	28
National Labor Relations Board v. *Geraldine Novelty Co., Inc.*, 173 F. 2d 14	21
National Labor Relations Board v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333	32
National Labor Relations Board v. *Sands Manufacturing Co.*, 306 U. S. 332	28
National Labor Relations Board v. *Union Pacific Stages, Inc.*, 99 F. 2d 153	33
Owens-Illinois Glass Co., Matter of, 80 N. L. R. B., No. 141	22
Phelps-Dodge Corp. v. *National Labor Relations Board*, 313 U. S. 177	32
Public Service Corporation of New Jersey, Matter of, 77 N. L. R. B., 153	22

Cases: Continued — Page

Rutland Court Owners, Matter of, 44 N. L. R. B. 587, 46 N. L. R. B. 1040 ..... 17, 18
Selig Manufacturing Company, Inc., Matter of, 79 N. L. R. B., No. 155 22
Simmons Creek Coal Co. v. Doran, 142 U. S. 417 24
Sparks, E. A., Matter of, Case No. 20-C-1570 23
United Biscuit Co. v. *National Labor Relations Board*, 128 F. 2d 771 28
United Engineering Company, Matter of, Case No. 20-C-1722 22
Zansner Foods, Inc., Matter of, Case No. 2-C-6960 23

Statutes:

Administrative Procedure Act (60 Stat. 237, 5 U. S. C., Secs. 1001, *et seq.*), Section 10 ..... 32, 33
Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141 *et seq.*):
Section 101 37
Section 102 ..... 22, 40
National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*):
Section 7 35
8 35
8 (1) 35
8 (3) 21, 23, 35
10 (c) 36
10 (e) 36
10 (f) 36
National Labor Relations Act as amended by the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141 *et seq.*):
Section 7 37
8 (a) 37
8 (a) (1) 37
8 (a) (3) 38
8 (a) (3) (A) 21, 38
8 (a) (3) (B) 21, 38
10 (c) 39
10 (e) 39
10 (f) 32, 40
War Labor Disputes Act, (57 Stat. 163, 50 U. S. C. App., Secs. 1501, et seq.) 30

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 694

COLGATE-PALMOLIVE-PEET COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., ET AL., AND WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (CIO)

No. 695

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (CIO), PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, COLGATE-PALMOLIVE-PEET COMPANY, AND INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. IV, 990-992) is reported in 171 F. 2d 956. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. I, 68-85) are reported in 70 N. L. R. B. 1202.

JURISDICTION

The decree of the court below (R. IV, 993-996) was entered on January 13, 1949. The Company's

petition for rehearing was denied on February 4, 1949 (R. IV, 997). The jurisdiction of this Court is invoked under Section 1254 of 28 U. S. C., and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether the proviso to Section 8 (3) of the National Labor Relations Act of 1935 justified an employer in discharging employees at the demand of the contracting union pursuant to a closed-shop agreement where, to the employer's knowledge, the contracting union's purpose was to punish employees for engaging in activities on behalf of a rival union, and where the rival union activities were carried on during a period when it was appropriate for the employees to seek a redetermination of representatives.

2. Whether there is substantial evidence to support the Board's finding that the employer knew that the discharge-demands under the closed-shop agreement were made by the contracting union in reprisal against the employees' activities on behalf of a rival union.

3. Whether there is substantial evidence to support the Board's finding that, prior to their discharge, there was no withdrawal from membership in the contracting union by the discharged employees, which would authorize their dismissal under the closed-shop agreement for failure to maintain their membership in the contracting union.

4. Whether the Board abused its discretion in ordering the reinstatement with back pay of discriminatorily discharged employees because of asserted misfeasance by them completely disassociated from the reason for their discharge.

5. Whether, in refusing to give effect to the closed-shop contract and in ordering the reinstatement with back pay of the discharged employees, the Board deprived the employer and the contracting union of property without due process.

6. Whether, in concluding that the Board's findings of fact were supported by substantial evidence, the court below considered the record as a whole, and whether it decided all relevant questions of law.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 28 U. S. C. 151, *et seq.*) and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are set forth in the Appendix, *infra*, pp. 35-41.

STATEMENT

I. The Board's Findings of Fact

Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board, on September 6, 1946, issued its findings of fact, conclusions of law, and order (R. I, 17-85). The pertinent facts, as found by the Board and as

shown by the evidence, may be summarized as follows:

A. The closed-shop agreement between the employer and the C.I.O.

On July 9, 1941, the employer, Colgate-Palmolive-Peet Company, petitioner in No. 694, and Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), herein called the C.I.O., petitioner in No. 695, entered into a closed-shop agreement of indefinite duration covering the production and maintenance employees at the Berkeley plant (R. I, 69, 23-24; R. III, 787-788, R. I, 223).[1] On July 24, 1945, a supplemental agreement was entered into which extended the 1941 contract by providing that that contract should "remain in full force and effect" pending the approval or disapproval by the Tenth Regional War Labor Board of certain changes (R. I, 69, 25; R. III, 788-789, R. I, 223).

B. The employees' dissatisfaction with the C.I.O. and the preliminary steps taken by them to change representatives

During the week following the extension of the closed-shop agreement, the five C.I.O. plant stewards arranged to call an open meeting on July 30, 1945, for the employees at large, to discuss a change

[1] References before the semicolon are to the Board's findings as set forth in the Board's decision; references after the semicolon are to the supporting evidence.

in bargaining representatives to be undertaken initially by the formation of a temporary organization known as the Employees Welfare Association (R. I, 26; R. I, 189-191, 208-210, 255). On July 28, 1945, a "notice of meeting" was posted on the bulletin boards throughout the plant inviting "all those interested in joining Employees Welfare Association" to be present at a neighboring meeting hall "at 4:15 p.m., Monday, July 30, 1945" (R. I, 69, 27; R. I, 191-192, 255-256). Employer officials knew of the posting as soon as it occurred and discussed it (R. III, 667-668, R. I, 255-256). Thereafter, one Luchsinger, a steward, and employee Olsen visited Superintendent Altman at his office, and obtained Altman's agreement to shut down the plant for two hours so that the night shift employees could attend the meeting (R. I, 69-70, n. 2; R. I, 268-269). The Board concluded that the employer would not have authorized so important an interruption in the plant's operations without ascertaining the purpose of the meeting (R. I, 69-70, 77).

C. The employer, knowing the C.I.O.'s discriminatory purpose, accedes to the C.I.O.'s request to discharge the stewards and the committeemen for their leadership of the rival union activities

On July 30, 1945, the same day for which the rival organizational meeting was scheduled, the C.I.O. requested and obtained the discharge of the

five C.I.O. stewards who were leading the employees' organizational efforts (R. I, 70, 29; R. III, 806-807, R. II, 654-656). In the early afternoon of that day, four C.I.O. officials, who were not employees of the Company, called upon Superintendent Altman at his office (R. I, 27; R. III, 667). The C.I.O. officials handed Superintendent Altman a letter which requested the discharge of the five duly-elected plant stewards, including Steward Luchsinger who had obtained Altman's agreement to shut down the plant. The letter stated "that charges have been preferred" against these employees "and that they have been suspended from membership" in the C.I.O. "pending a trial". (R. I, 27-28; R. III, 668-669, 784-785, R. I, 259, 256.) After a conference with Vice President Railey, the five stewards were summoned and discharged with the statement that under the terms of the closed-shop agreement the employer was obliged upon demand to terminate their employment until they were restored to good standing by the C.I.O. (R. I, 70, 29; R. I, 194, 256-257, 288-289, R. II, 522, 524, R. III, 669, 670). Each of the stewards was given a letter by the C.I.O. officials (R. I, 29; R. II, 525, 670, R. I, 193). The stewards thereupon left Altman's office (R. I, 29; R. I, 195, R. II, 525, R. III, 670-671). The letters notified the stewards that they were suspended from membership in the C.I.O. pending a union trial upon unspecified charges alleging the violation of the C.I.O.'s Declaration of Principles, Oath of Membership, and Article 9,

Section 1, of C.I.O. Constitution and By-Laws, all of which are platitudinous in nature (R. I, 70; R. III, 847-848, R. I, 229, R. III, 853-856, R. II, 617).

Immediately following the discharge of the five stewards, the C.I.O. representatives distributed throughout the plant a bulletin reading (R. I, 70, 31-32; R. I, 256, R. III, 785, R. I, 259):

ATTENTION

All Warehouse Union Members:
An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

WARNING

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

Of the 313 production and maintenance employees (R. I, 61, n. 30; R. II, 421-422), more than 200 attended the scheduled anti-C.I.O. meeting (R. I, 70, 32; R. I, 196, 256). It was unanimously resolved to break relations with the C.I.O. and to form an independent union, known as Employees Welfare Association, until affiliation with a strong international union could be accomplished (R. I, 70, 32; R. I, 196, 200-201, 261, 288, R. III, 848, R. I, 259). It was also unanimously agreed that four employees, Thompson, Sherman, Lonnberg,

and Olsen, designated committeemen and elected to act as officers of the interim organization, should seek the reinstatement of the discharged stewards, and that should they fail in their quest, all the employees would in protest cease working (R. I, 70, 33; R. I, 196, 199, R. III, 849, R. I, 259). Upon the close of the meeting the four committeemen dispatched the following telegram to Vice President Railey (R. I, 70-71, 34; R. I, 257, R. III, 786-787, R. I, 259):

> You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co All being former members of I L W U 1-6 and being more than 50 percent of total employees have withdrawn and severed relations with I L W U-6 as collective bargaining agent.

A telegram of similar purport was sent to the C.I.O. (R. I, 33-34; R. I, 257, R. III, 786, R. I, 259).

On the following morning, July 31, 1945, the four committeemen called upon Vice President Railey at his office, and unsuccessfully urged the reinstatement of the five discharged stewards (R. I, 71; R. I, 257, R. II, 360-361). Railey persisted in his position that under the closed-shop agreement he had no choice but to comply with the C.I.O.'s demand (R. I, 34; R. I, 257). Meanwhile, Superintendent Altman and a group of C.I.O. officials joined the conference where the C.I.O. officials, in the presence of the employer's ranking officials, bluntly informed the four committeemen

that suspension notices for three of them were already in preparation (R. I, 35, 71; R. I, 263-264, R. II, 527), and requested the name of the fourth one, Olsen, so that they could prepare such notice for him. Later that morning the employer received a formal request from the C.I.O. notifying it of the suspension of Thompson, Sherman, Lonnberg, and Olsen from membership in the C.I.O. and requesting their discharge (R. I, 71, 36-37; R. III, 673-675, 846-847).

Also that same morning, C.I.O. representatives circulated another bulletin among the employees at the plant (R. I, 71, 37; R. I, 257). The leaflet warned the employees against aligning themselves with "Sherman-Marshall-Lundeberg & Co.," lest they jeopardize "their own *reputation,* their *union standing,* their *seniority,* and their jobs," and pointedly referred them to "the provisions of the union contract, including the requirement that *only members of Warehouse Union, Local No. 6, ILWU, in good standing* may be employed by the company" (R. I, 71, 37-38; R. III, 789, R. I. 259). Despite this warning, a majority of the employees, upon learning of the refusal to reinstate the five stewards, at noon left the plant in order to hold a second anti-C.I.O. meeting (R. I, 71, 38; R. I, 257). Vice President Railey, who attended the meeting upon invitation, addressed the employees, stating that the reinstatement of the stewards was impossible because of the employer's contractual obligation under the closed-shop agreement (R. I, 72,

38-39; R. I, 257-258, R. II, 529-531). Dissatisfied with Railey's explanation and having failed in their effort to secure the reinstatement of the stewards, the employees in protest voted to reaffirm their resolution not to return to work (R. I, 72, 38-39; R. I, 202, 258, 266, R. III, 850-851, R. I, 259). The strike lasted two and one-half days, and most of the workers participated in it (R. I, 72, 39; R. III, 677, R. II, 533).

Two days later, on August 2, 1945, a third anti-C.I.O. meeting was held, again attended by a substantial majority of the employees, at which it was voted to dissolve Employees Welfare Association, to affiliate with International Chemical Workers Union, A.F.L., herein called the A.F.L., and to return to work the following morning pending an election among the employees to be requested of the National Labor Relations Board (R. I, 72, 40; R. I, 258, R. III, 851-852, R. I, 259). The next morning, all the employees returned to work except the five stewards, who had been previously discharged, and the four committeemen, who had been told the day before by Superintendent Altman that in view of their suspension it would be futile for them to report to work (R. I, 72, 39-40; R. I, 258, 266-268, R. II, 378, R. III, 806-807, R. II, 654-656).

D. The employer, knowing the C.I.O.'s discriminatory purpose, accedes to the C.I.O.'s request to discharge the twenty-eight additional employees for their rival union activities, and refuses to reemploy the stewards and the committeemen

1. Further steps taken to change bargaining representatives and the ensuing campaign

Upon the completion of affiliation with the A.F.L., steps were undertaken by it to secure a change of representatives by resort to formal Board process, by the filing on August 3, 1945, of a petition for the investigation and certification of representatives. The Board held a hearing on this petition on August 22, 1945. (R. I, 72, 73, 41, 45; R. II, 549-552; R. III, 799-805.)[2] In addition, the A.F.L. invoked the Board's processes for the redress of unfair labor practices in order to remedy the dismissal of the stewards and the committeemen by filing, on August 14, 1945, a charge alleging the discriminatory dismissal of the stewards

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[2] Pursuant to the Board's Decision and Direction of Election issued on September 26, 1945, an election was held on October 16, 1945, at which the A.F.L. was defeated 181 to 126 (R. I, 75; R. II, 549-552, R. III, 799-805). Thereafter, upon objections to the election filed by the A.F.L., the election was set aside by the Board because the employer's discharge of employees at the C.I.O.'s request for protected union activities prevented the result of the election from being truly representative of the employees' untrammeled wishes (R. I. 75, 79, 83).

and the committeemen (R. I, 72; R. I, 92-93) The employer admittedly knew of the charge on August 22, 1945 (R. I, 107).

After the election petition was filed by the A.F.L., campaigns for the employees' favor were conducted in the plant by the A.F.L. and the C.I.O. (R. I, 72; R. II, 547). The Company's Labor Relations Director Wood in his daily tours of the plant was handed union literature which was being circulated in profusion throughout the plant, and he observed the A.F.L. buttons which the employees were wearing on their work clothes (R. III, 759-761). This campaign was open, widespread, and intense (R. I, 72, 41; R. I, 299-301, 305-314, 330-332, R. II, 344, 387-388, 391-394, 411-414, 430-431, 433-436, 438-439, 475-478, 481-488, 516, 564, 566, 580-581, 583-584, 592-594, 598, 607, 608-612, 631-632, 642, R. III, 785, 789-790, R. I, 259, R. III, 794-798, 808-847). The C.I.O., in the conduct of its campaign, both orally and through leaflets, made clear that the price of adherence to the A.F.L. was discharge under the closed-shop contract (R. I, 72, 77, 43-44; R. I, 299-300, 305-314, R. II, 438-439, 475, 481-488, 516, 564, 580-581, 592-594, 598, 608-609, 631-632, 642, R. III, 785, 789-790, R. I, 259, R. III, 794-798, R. II, 476-477).

2. The refusal to reemploy the stewards and the committeemen on August 17

On August 17, 1945, the five stewards and the four committeemen reported to work, but their

request for reinstatement was denied (R. I, 73; R. I, 267-268, 289-290, R. II, 341-342, 380-381, 427, R. III, 679-680, 699-700). Labor Relations Director Wood stated that "I fell back on our legal advice" and represented to the discharged employees that under the closed-shop contract the employer was under an absolute duty to abide by the C.I.O.'s wishes (R. I, 73; R. III, 727-728). They were told by Wood that "You will have to remain out until the issue has been determined between you and the C.I.O." (R. I, 73; R. III, 728).

3. The C.I.O. request for the discharge of seventy employees on August 30

On August 30, 1945, a C.I.O. official visited Labor Relations Director Wood at his office and demanded the discharge of an estimated seventy employees, about one-fifth of the working force, upon the asserted ground that they were not members of the C.I.O. in good standing (R. I, 73-74; R. III, 728-731). Wood told him, "Go to hell * * * I [am] * * * not going to act on any such order * * * This thing has gone too far. You are getting too many people involved here. Why, the first thing you know, if this keeps on, we will be shut down * * * I want to talk to [C.I.O. Vice President] Heide about this thing before we get into this thing any deeper" (R. I, 74; R. III, 730). After a discussion with Heide, this particular request was evidently withdrawn (R. I, 74; R. III, 730).

4. The discharge of six employees on August 31

On the morning of August 31, 1945, the C.I.O. requested and obtained the discharge of six employees pursuant to the closed-shop agreement (R. I, 46; R. III, 806-807, R. II, 654-656). The discharges were effected in conjunction with a wholesale inspection of the employees' union dues books.[3] This inspection was conducted by C.I.O. officials in the vicinity of the entrance to the plant during the time when the employees were reporting to work on the morning shift (R. I, 46; R. III, 681-682, 709-716). Superintendent Altman and Assistant Superintendent Carter were present to observe the event (R. III, 681-682, 710-711). Assistant Superintendent Carter saw the C.I.O. officials hand envelopes to some of the employees, and heard them tell these employees that they could not report to work (R. III, 715-716). One employee who received a suspension notice was told, "Here is a letter for you, and you are fired. You cannot work here anymore. * * * You go to your A. F. of L. friends to help you now" (R. II, 516). Another suspended employee who received a notice was told, "take it back to your union, see if they can put you back to work, you are so crazy about them" (R. II, 564).

[3] It was stipulated at the hearing that the C.I.O. did not request the discharge of any of the stewards, the committeemen, or the twenty-eight additional employees because of delinquency in the payment of union dues to the C.I.O. (R. II, 518).

5. The discharge of eighteen employees on September 1

On September 1, 1945, the C.I.O. requested and obtained the discharge of eighteen more employees pursuant to the closed-shop contract (R. I, 74, 46-47; R. III, 806-807, R. II, 654-656). On that day, the C.I.O. delivered a letter to the employer stating that these eighteen employees had been suspended from membership in the C.I.O. and requesting their discharge (R. I, 46-47; R. III, 792, R. I, 315, R. III, 684, R. II, 534). After a conference among the employer's officials, it was decided to call the designated employees into Vice President Railey's office to inform them that their employment was terminated (R. I, 47; R. III, 732-734, R. I, 313-316, R. II, 534-535, 567-568, 572-573, 620-621). The eighteen were called in and Labor Relations Director Wood reiterated to the assembled employees the managment's position that it was under an absolute duty under its closed-shop contract to discharge them upon demand of the C.I.O. (R. I, 47; R. II, 735). A turbulent session ensued, during which employee Norris, whose discharge was requested, expressed her conviction that the employees were dismissed because "we wore A. F. of L. buttons and we distributed literature," to which Wood replied, "I guess it is so, that could be it" (R. II, 488). She further testified that Wood stated, "We talked too much, that if we had kept our mouths shut we wouldn't have got into this mess" (R. II, 488-489). Another

employee testified that Wood said, "If you had kept this quiet about the AFL this wouldn't have happened to you" (R. I, 316). A third employee testified that Wood said, "If we [the discharged employees] didn't wear the AFL buttons and didn't talk too much, why, we wouldn't get in this trouble in the first place" (R. II, 577). One of the assembled employees complained, "I don't see why we can't change from one union to another" (R. II, 492).

6. The discharge of four employees on September 5, 7, and 11

Several days later, on September 5, 7, and 11, 1945, four additional employees were dismissed pursuant to the closed-shop contract under similar retaliatory circumstances (R. I, 50 and n. 20, 51-52; R. III, 806-807, R. II, 654-656, 630-635, 641-646).

E. THE C.I.O.'S SUBSEQUENT TRIAL OF THE DISCHARGED EMPLOYEES

Subsequent to their discharge, the five stewards, the four committeemen, and the twenty-eight additional employees were tried before C.I.O. tribunals. On October 3, 1945, the C.I.O. tried the five stewards and the four committeemen *in absentia*, and on October 10, 1945, a decision of the trial committee was issued recommending their expulsion from the C.I.O. (R. I, 52-53; R. III, 856-866, 877-922). On December 17, 1945, the twenty-

eight additional employees, with one exception, were tried by a C.I.O. tribunal (R. I, 52; R. III, 923-987). Some of these employees protested what they believed to be the irregularity of the proceeding, and forthwith withdrew from further participation in it (R. III, 924, 930-935). The remaining employees participated in the proceeding and during its course entered a so-called "guilty" plea admitting that they engaged in the two and a half days' work stoppage (R. II, 506-507, R. III, 969-976). On December 24, 1945, a decision of the trial committee was issued recommending that the employees who withdrew from the proceeding be expelled and that the employees who pleaded "guilty" be placed on probationary status (R. I, 53-54; R. III, 867-876).

II. The Conclusions and Order of the Board

On the basis of the foregoing facts, the Board determined that "It is clear from the record, and we find, that the [employer] *knew* of the C.I.O.'s reason for demanding the discharges" (R. I, 76), namely, "that the C.I.O. demanded such action because of the complainants' exercise of the right guaranteed employees in the Act to bargain collectively through representatives 'of their own choosing' " (R. I, 76).

The Board, accordingly, concluded that the employer "Thereby violated Section 8 (1) and (3) of the Act, for the reasons stated in the *Rutland Court* case" (R. I, 76). In *Matter of Rutland Court*

Owners,[4] the Board had held that an employer cannot properly discharge employees pursuant to the closed-shop provisions of a contract when, to his knowledge, the discharge is requested by the union which is a party to the contract for the purpose of eliminating employees who have sought to change bargaining representatives at a period when it is appropriate for the employees to seek a redetermination of representatives. By this principle the Board has sought to prevent a closed-shop agreement from being converted into a device to accomplish the permanent suppression of the employees' will in the matter of choice of representatives. In the *Rutland Court* case the Board, by adopting this principle, attempted to work out an accommodation between the sometimes conflicting interest of the free choice of representatives by employees, on the one hand, and of union security and stability of the bargaining relationship, on the other.

The Board's order required the employer to cease and desist from encouraging or discouraging membership in the A.F.L., the C.I.O., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire, tenure, or other terms of employment (R. I, 80). Affirmatively, the Board's order required the employer to offer reinstatement with

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[4] 44 N. L. R. B. 587, 46 N. L. R. B. 1040.

back pay to the thirty-seven employees, and to post an appropriate notice (R. I, 81-82).

III. Proceedings in the Court Below

On December 30, 1946, the employer filed in the court below a petition to review and set aside the Board's order (R. I, 101-126). The Board, in its answer, requested enforcement of its order (R. I, 134-142). The C.I.O., A.F.L., and named individuals, whom the Board's order required the employer to reinstate with back pay, were permitted by order of the court below to intervene in the proceeding (R. I, 143-144). On January 13, 1949, the court handed down its opinion (R. IV, 990-992), and entered its decree enforcing the Board's order (R. IV, 993-996).

Argument

The decision below presents one question of law as to which there is a conflict of decisions among the circuits, namely: whether the Board properly construed Section 8 (3) of the National Labor Relations Act, before its amendment, as precluding an employer from discharging employees pursuant to a closed-shop agreement, when the contracting union, to the employer's knowledge, has demanded the discharge for the purpose of punishing employees for engaging in activities on behalf of a rival union at a time when it is appropriate for the employees to seek a redetermination of bargaining representatives. The question thus

phrased summarizes the import of the first five questions in No. 694 (Pet., 21-23).[5] On this question, we set forth the considerations which will assist the Court in determining whether certiorari should or should not be granted. The remaining questions which are raised in Nos. 694 and 695 present no issues warranting review by this Court.

1. Prior to the amendments to the National Labor Relations Act in 1947, the question respecting the power of an employer, under Section 8 (3) of the National Labor Relations Act, to discharge employees under a closed-shop agreement although he knows the request for the discharge was motivated by a desire of the contracting union to bar a rival union movement at a time when a change of representatives is proper, was deemed of sufficient importance to warrant the grant of certiorari by this Court. *Local No. 2880* v. *National Labor Relations Board,* 158 F. 2d 365 (C. A. 9), certiorari granted, 331 U. S. 798, certiorari dismissed on motion of petitioner, 332 U. S. 845. That case however, was never decided by the Court on the merits because after the amendment of the Act the writ was dismissed on motion of the petitioner. The decision below is based on the *Local 2880* case (R. IV, 992). It accords with the decisions of the Court of Appeals for the Second Cir-

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[5] Petitioner in No. 695 does not present this question (Pet. 8-9, 11-12).

cuit on this question,* but it is in square conflict with the decision of the Court of Appeals for the Seventh Circuit in *Lewis Meier & Co.* v. *National Labor Relations Board*, 21 L. R. R. M. 2093 (C. A. 7, November 3, 1947), decided "on the authority of *Aluminum Company of America* v. *National Labor Relations Board* (1946), 159 F. 2d 523 [C. A. 7]."

The 1947 amendment of Section 8 (3) of the National Labor Relations Act by Title I of the Labor Management Relations Act constitutes a factor militating against review. At the present time, an employer is authorized to discharge employees under a union security agreement only (1) for failure to acquire union membership open to employees upon nondiscriminatory terms and (2) for nonpayment of union dues and initiation fees. Section 8 (a) (3) (A) and (B) of the National Labor Relations Act, as amended, *infra*, pp. 37-38. These reasons aside, no discharge under a union security agreement is permissible, and, in consequence, a discharge for rival union activity carried on at an appropriate time would be discriminatory. But the amended provision is not effective as to closed-shop agreements entered into before its enactment, or, as to closed-shop agreements for not longer than a one-year term entered into after its enactment but before August

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* *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14 (C. A. 2); *National Labor Relations Board* v. *American White Cross Laboratories, Inc.*, 160 F. 2d 75 (C. A. 2).

22, 1947, its effective date. Section 102 of the Labor Management Relations Act, *infra*, pp. 40-41. Therefore, the original Section 8 (3) retains its vitality with respect to cases arising before the amendment and with respect to cases arising since the amendment under closed-shop agreements effective after the amendment because continued or entered into by virtue of the saving provision. At the present time, there are pending seventeen active cases of this nature. Three such cases are before the Courts of Appeals awaiting decision or argument, one each before the Seventh Circuit,[7] the Sixth Circuit,[8] and the Third Circuit;[9] three cases are awaiting institution of enforcement proceedings in the Courts of Appeals;[10] three cases are awaiting determination of the employer's position on compliance with the Board's order;[11] two cases are pending before the Board for decision;[12] and six cases are either

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[7] *Matter of Owens-Illinois Glass Company*, 80 N. L. R. B., No. 141.

[8] *Matter of Eaton Mfg. Co.*, 76 N. L. R. B. 261.

[9] *Matter of Public Service Corporation of New Jersey*, 77 N. L. R. B., No. 53.

[10] *Matter of Selig Manufacturing Co., Inc.*, 79 N.L.R.B., No. 155; *Matter of National Electric Products Corporation*, 80 N. L. R. B., No. 151; *Matter of Detroit Gasket & Manufacturing Co.*, 79 N. L. R. B., No. 83

[11] Matter of American Packing Corporation, 82 N.L.R.B., No. 117; *Matter of Hamilton-Scheu-Walsh Shoe Co.*, 80 N. L. R. B., No. 234; *Matter of Interstate Engineering Corp.*, 83 N. L. R. B., No. 16

[12] *Matter of United Engineering Company*, Case No. 20-C-1722; *Matter of Hammond Lumber Co.*, Case No. 21-C-3104.

under investigation, in hearing, or awaiting the trial examiner's intermediate report.[12] Except for these cases, and other discharges which may take place under closed-shop agreements entered into before the enactment of the Labor Management Relations Act, the proviso to the original Section 8 (3) of the National Labor Relations Act has no continuing vitality. The contrariety of the results in the Courts of Appeals thus does not here afford the same compelling reason for granting certiorari which it usually has.

2. Petitioner in No. 694 (Pet. 23-24, 29-30, 61-63), contends that there is no substantial evidence to support the Board's finding, which was sustained by the court below (R. IV, 992), that the employer knew that the discharges of the thirty-seven employees under the closed-shop agreement were requested by the contracting union in reprisal against the employees' activities on behalf of the rival union. This presents no question warranting review. Moreover, as the evidence set forth in the Statement (pp. 3-17, *supra*) shows, the finding is amply sustained.

Petitioner complains that the Board places upon it the burden of making a "bona fide effort to

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[12] *Matter of International Detrola Corp.*, Case No. 7-CA-90; *Matter of Chase Candy Company*, Case No. 14-CA-172; *Matter of Atlantic & Pacific Tea Company*, Case No. 2-CA-349; *Matter of Compressed Air Workers Union, Local 147*, Case No. 2-CB-117; *Matter of E. A. Sparks*, Case No. 20-C-1570; *Matter of Zansmer Foods, Inc.*, Case No. 2-C-6960.

evaluate all the evidence before it" (Pet. in No. 694, 24, 29-30, 62-63). After finding that the employer knew of the C.I.O.'s discriminatory purpose, in answer to the employer's contention that it "could not 'necessarily have deduced' the C.I.O.'s true purpose" (R. I, 79), the Board concluded, as an alternative ground for decision, that the employer "made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C.I.O.'s failure to deny the obvious facts, to believe that the C.I.O. was not acting in reprisal against the complainants because of their anti-C.I.O. activity" (R. I, 79). The Board holds only that the employer may not disregard the plain import of facts of which it is apprised. Surely, it is old law that a person "has no right to shut his eyes or his ears to the inlet of information," and then claim in good faith that he is "without notice."[14]

3. Petitioners in both Nos. 694 and 695 contend that the discharged employees withdrew from membership in the C.I.O., as distinguished from engaging in rival union activity while maintaining membership in the C.I.O., thus justifying their discharge under the closed-shop agreement (Pet. in No. 694, pp. 23, 52; Pet. in No. 695, pp. 8-9, 11-12). The basis for the contention is founded

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[14] *Simmons Creek Coal Company* v. *Doran*, 142 U. S. 417, 437; quoting from the Virginia Court of Appeals in *Burwell's Admr's.* v. *Fauber*, 21 Gratt. 446, 463.

upon the telegrams sent to the employer and the C.I.O. by the four committeemen at the conclusion of the first anti-C.I.O. meeting on July 30, 1945. The telegram to the employer notified it "of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members I L W U 1-6 and being more than 50 percent of total employees have withdrawn and severed relations with I L W U-6 as collective bargaining agent." The telegram to the C.I.O. was similar in content. (*Supra*, p. 8.)

The contention is a palpable afterthought. The telegrams could not constitute instruments of withdrawal from the C.I.O., because they did not identify by name the more than 200 employees covered by them. None of the thirty-seven employees selected for discharge were delinquent in their payment of dues to the C.I.O. (R. II, 518). The C.I.O. at no time accepted the telegrams as an effective withdrawal from membership in the C.I.O., and at no time represented to the employer that its request for the discharge of the A.F.L. adherents was based on the telegrams as an act of withdrawal from membership. Its formal representations, contained in its letters to the employer, requested the discharge of named employees because they had been "*suspended* from membership" pending a trial before a C.I.O. tribunal upon charges filed against them (R. III, 846-847, 784-785, 792-793). [Italics supplied.] The C.I.O. can-

not consistently maintain that the employees were not members of the C.I.O., but that the C.I.O. at the same time asserted jurisdiction over them for the purposes of trial (*supra*, pp. 6, 16-17.)

The telegram to the employer speaks of "more than 200 employees" and "more than 50 percent of total employees." The selection of only 37 of these employees for discharge emphasizes that the telegram as an ostensible act of withdrawal from the C.I.O. played no part in the discharge demands. Moreover, the suggested construction glosses over the phrase reading "severed relations with I L W U-6 *as collective bargaining agent.*" [Italics supplied.] This is the key to the interpretation of the telegram and indicates the meaning which was ascribed to it by all, including the employer and the C.I.O. Its purport and intent was to express the desire of a majority of the employees to replace the C.I.O. as bargaining representative. As explained by Committeeman Sherman in his testimony: "It was not the intent of the telegram to segregate individuals as discontinuing affiliations with the C.I.O. The intent of the telegram was that we were discontinuing the bargaining agency, forming another group." (R. II, 399.)

The Board correctly concluded (R. I, 78, n. 8): "As for the complainants' withdrawal from the C.I.O., which would ordinarily entitle the [employer] to discharge them in view of the closed-

shop contract, it will be observed that the C.I.O. did not accept their withdrawals nor is there any evidence that the [employer] discharged them or rejected the reinstatement application of the stewards and the committeemen *for that reason.* On the contrary, the [employer's] answer and evidence show beyond dispute that the [employer] acted because of the complainants' suspension by the C.I.O. pending determination of charges of anti-C.I.O. activity, and that the attempted withdrawals played no part therein."

The effort to imbue the telegrams with significance which they do not possess injects into the proceedings an issue which does not exist. The Board's conclusion of fact does not raise even a close question of substantial evidence, much less that very exceptional showing of error warranting review of the concurrent findings of the Board and the court below.

4. Petitioner in No. 695 contends that in ordering the discharged employees to be reinstated with back pay, the Board abused its discretion (Pet. in No. 695, pp. 8, 9-11; See also Pet. in No. 694, pp. 56-58). For the purposes of this argument, petitioner concedes "that the discharges were in violation of the Act," but it asserts that "irrespective of the merits of the unfair labor practice issue," it would not effectuate the policies of the Act to reinstate with back pay employees who participated in a work stoppage in contravention of

the C.I.O.'s commitment not to engage in a strike during a war, and to support its conclusion it relies on *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332; and *United Biscuit Co.* v. *National Labor Relations Board*, 128 F. 2d 771 (C. A. 7).

In *Fansteel*, the employees were discharged, not for lawful union activity, but for tortious conduct; in *Sands*, the employees were discharged, not for lawful union activity, but for breach of contract; in *United Biscuit*, the employees were replaced during an unfair labor practice strike without the right of reinstatement with back pay, not for lawful union activity, but for breach of contract; here, by hypothesis, the employees were discharged, not for asserted misfeasance, but for lawful union activity. But no case holds that an otherwise discriminatory discharge is outside of the protection of the National Labor Relations Act because of misconduct disassociated from the reason for the discharge.

Analysis of petitioner's position discloses its extremity. It would deny reinstatement with back pay to (1) the five plant stewards, (2) the four committeemen, and (3) the twenty-eight additional employees. The five plant stewards were discharged before any work stoppage was even contemplated. The work stoppage was planned in protest against the discriminatory discharge of

the five stewards. At the conference with the employer seeking the reinstatement of the five stewards, the four committeemen were ordered discharged by the C.I.O. It was not until the C.I.O. acted in reprisal against the five stewards and the four committeemen that the work stoppage took place. Thus it is plain that if the C.I.O. were concerned with avoiding the work stoppage *qua* work stoppage the simple expedient would have been to permit the reinstatement of the stewards who had done no more than exercise their legal right to seek a change of representatives. As to the discharge of the *twenty-eight* additional employees one month after their participation in the work stoppage in which most of the *313* employees partook, their selection for discharge cannot for a moment be attributed to a belated desire by the C.I.O. to vindicate a breach of the no-strike pledge which it had itself provoked. If the C.I.O. were interested in avoiding interruptions to war work, it would not itself have caused the permanent removal of thirty-seven employees and unsuccessfully have attempted the removal of seventy employees. Indeed, in refusing to accede to the C.I.O.'s request on August 30 to discharge the seventy employees, the employer's Labor Relations Director Wood himself stated to the C.I.O. official: "This thing has gone too far. You are getting too many people involved here. Why, the first thing you know, if this keeps on, we will be shut down." (*supra,* p. 13.)

But the conclusive consideration here is that Congress itself had made clear that engaging in a war-time strike does not deprive employees of the benefits of the National Labor Relations Act. Section 8 of the War Labor Disputes Act [15] precluded a war-time strike except after exhaustion of the procedure therein specified. Violation of Section 8, however, did not affect the employee's protection under the National Labor Relations Act, as the Court of Appeals for the Sixth Circuit held in *Hamilton* v. *National Labor Relations Board,* 160 F. 2d 465, 471 (C. A. 6), certiorari denied *sub nom. Kalamazoo Stationery Co.* v. *National Labor Relations Board,* 332 U. S. 762:

> But it does not follow that a violation of Section 8 of the War Labor Disputes Act deprives an employee of his rights under the National Labor Relations Act. There is no provision in the War Labor Disputes Act to that effect. Section 10 of the National Labor Relations Act specifically recognizes the right of the employee to strike. It deals with employment generally, not merely war production. The War Labor Disputes Act is limited to war production and is not an attempt to amend or modify the National Labor Relations Act. Its legislative history shows that it was not intended to curtail in any way the rights and protection accorded employees under the National Labor Relations Act. The Act as originally passed in the House provided that violators should forfeit their rights under

[15] 57 Stat. 163, 50 U. S. C. App. 1501.

> the National Labor Relations Act. This provision was not approved by the Senate and the revised bill which later became the law did not contain such a penalty. In the debates which followed submission of the Conference Committee Report it was made clear employees' rights under the National Labor Relations Act were not affected. See 89 Cong. Rec. 5304, 5305, 5326, 5327, 5382, 5392, 5730, 5732, 5733; H. Rep. No. 531, 78th Cong., 1st Sess., pp. 5, 9. With this legislative history before us we can not give to the Act the construction contended for by the respondent.

Certainly the private policy of a labor organization, unctuously invoked in the circumstances of this case, does not attain to greater dignity than the national policy declared by Congress. Compare, *Giboney* v. *Empire Storage & Ice Co.*, No. 182, this Term, decided April 4, 1949, slip op., pp. 4, 7.

5. Petitioner in No. 694 contends that in refusing to give effect to the closed-shop contract and in ordering the reinstatement with back pay of the discriminatorily discharged employees, the Board deprived the employer and the contracting union of property without due process of law (Pet. in No. 694, p. 24). This presents no substantial question of constitutional law. If the Board's interpretation of the proviso to Section 8 (3) of the Act is proper, its constitutionality rests on the same basis as the other parts of Section 8 (3). "The Board's order does not violate the Fifth

Amendment. * * * in the exercise of the commerce power, Congress may impose upon contractual relationships reasonable regulations calculated to protect commerce against threatened industrial strife. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48. The Board's order there sustained required the reinstatement of the discharged employes." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347. See also, *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U. S. 525; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 187.

6. Petitioner in No. 694 (Pet. 24, 29, 58-60) also contends that the court below, in affirming the Board's findings of fact as supported by substantial evidence, failed to review the record *as a whole* as required by Section 10 (f) of the National Labor Relations Act, as amended, and Section 10 (e) of the Administrative Procedure Act.[16] The decision below will be scanned in vain for any intimation by the court that it did not consider the record as a whole in reaching its conclusion, or that the court believed that review of isolated portions of the record without regard to competing matter sufficed. Indeed, petitioner imputes to the court below a view of its function which it rejected long before the enactment of the Administrative Procedure Act or the amendment of the National

[16] 60 Stat. 237, 5 U. S. C., § 1001, *et seq.*

Labor Relations Act. In *National Labor Relations Board* v. *Union Pacific Stages, Inc.*, 99 F. 2d 153, 177 (C. A. 9), the court below stated:

> But the courts have not construed this language [of the Act] as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

Nor is petitioner's contention that the court below failed to decide all relevant questions of law better taken (Pet. in No. 694, pp. 24, 29, 61). Section 10 (e) of the Administrative Procedure Act provides that "So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law . . ." But this does not mean that the reviewing court is required to discuss every question of law presented, however far-fetched or tenuous, in its written opinion.

As to the specific questions of law asserted to be unanswered by the court below, petitioner states that they are "whether the Board could hold that the C.I.O.'s lawful action in disciplining its members became unlawful because of a state of mind, and whether [employer] could refuse to perform a lawful contract because it knew that such performance might incidentally assist the C.I.O. to evade the law" (Pet. in No. 694, pp. 61, 55-56). Insofar as there is substance to these contentions, they constitute no more than a repetition in different words of the main attack upon the Board's

interpretation of Section 8 (3) of the Act. In approving the Board's order, the court below necessarily rejected these contentions, and accordingly, petitioner has the court's decision on the questions of law presented.

CONCLUSION

For the reasons stated, we neither oppose nor consent to the grant of the petition for a writ of certiorari in No. 694 limited to the first question set forth at page 2, *supra*. However, with respect to the other questions raised in No. 694 and with respect to all questions raised in No. 695, we urge that the petitions for writs of certiorari should be denied.

Respectfully submitted.

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May, 1949

APPENDIX

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151 *et seq.*), are as follows:

* * * * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective

bargaining unit covered by such agreement when made.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

Sec. 10. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the

court shall proceed in the same manner as in the case of an application by the Board under subsection (e), * * * and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

* * * * *

2. The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * *

Sec. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8 (a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

Sec. 10 * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: * * * If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for

the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

(f) If any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) * * *; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * * *

Sec. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and sections 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into

prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

* * * * *

★ U. S. Government Printing Office J836234/598

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	3
Statement	3
I. The Board's findings of fact	4
A. The closed-shop agreement between the employer and the C. I. O.	4
B. The employees' dissatisfaction with the C. I. O. and the preliminary steps taken by them to change representatives	5
C. The employer, knowing the C. I. O.'s discriminatory purpose, accedes to the C. I. O.'s request to discharge the stewards and the committeemen for their leadership of the rival union activities	8
D. The employer's knowledge of the C. I. O.'s purpose of retaliating against employees actively supporting the rival union	14
E. The employer, knowing the C. I. O.'s retaliatory purpose, accedes to its request to discharge the twenty-eight additional employees for their rival union activities and refuses to reemploy the stewards and the committeemen	20
1. The refusal to reemploy the stewards and the committeemen on August 17	21
2. The C. I. O. request for the discharge of seventy employees on August 30	22
3. The discharge of six employees on August 31	22
4. The discharge of eighteen employees on September 1	23
5. The discharge of four employees on September 5, 7, and 11	25
F. The C. I. O.'s subsequent trial of the discharged employees	27
II. The Board's conclusions of law	28
III. The Board's order	32
IV. The proceedings in the court below	33
Summary of argument	35

Page

Argument:

The proviso to Section 8 (3) of the National Labor Relations Act does not give an employer the unqualified right to discharge employees at the demand of the contracting union pursuant to a closed-shop agreement where, to the employer's knowledge, the contracting union's purpose is to punish employees for engaging in activity on behalf of a rival union, carried on during a period when it is lawful and proper for the employees to seek a redetermination of representatives 39

A. Preliminary statement 39

B. The Board's interpretation of the proviso to Section 8 (3) of the Act has been upheld in *Wallace Corporation* v. *National Labor Relations Board*, 323 U. S. 248 42

C. The Labor Management Relations Act, 1947, shows legislative endorsement of the *Wallace* and *Rutland Court* principles 54

D. Neither the language of the proviso to Section 8 (3) of the original National Labor Relations Act nor its legislative history authorizes the use of a closed-shop agreement for the purpose of eliminating efforts to secure a change in bargaining representatives 56

E. The general purpose and structure of the Act require that the proviso be construed so as to permit employees freedom periodically to change bargaining representatives 62

F. States hospitable to the closed-shop agreement do not permit its blanket performance under all circumstances; it is unlikely, therefore, that such absolutism was contemplated by Congress 72

G. The Board's interpretation of the proviso to Section 8 (3) preserves the integrity of the Act without impairing the essence of the closed-shop agreement 78

1. Security and share the cost 79

2. Responsibility 81

3. Sentimental or social 83

H. The Board's lack of power to reach the contracting union's discriminatory conduct in requesting the discharge does not detract from its power to reach the employer's independent wrongdoing in knowingly complying with the discriminatory request 85

I. In order to hold the employer responsible for a wrongful discharge under a closed-shop agreement, the employer must be shown to have knowledge of the contracting union's discriminatory purpose; and in order for the employees'

Argument—Continued
The proviso to Section 8 (3)—Continued
I.—Continued
rival union activity to be protected, it must occur during a period appropriate for redetermination of representatives 93
Conclusion 110
Appendix 111

AUTHORITIES CITED

Cases: Page
Algoma Plywood & Veneer Co. v. *Wisconsin Employment Relations Board*, 336 U. S. 301 ..... 59, 61
Amalgamated Association v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 92
Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U. S. 261 ..... 91, 92
Amazon Cotton Mills Co. and National Labor Relations Board v. *Textile Workers Union*, 167 F. 2d 183 92
American Federation of Labor v. *American Sash & Door Co.*, 335 U. S. 538 ..... 53, 63, 64
American Federation of Labor v. *National Labor Relations Board*, 308 U. S. 401 68
American News Co., Inc., Matter of, 55 N. L. R. B. 1302 91
American Packing Corporation, Matter of, 82 N. L. R. B., No. 117, 23 L. R. R. M. 1640 44
American White Cross Laboratories, Inc., Matter of, 66 N. L. R. B. 866, enforced, 160 F. 2d 75 43
Atlanta Oak Flooring Company, Matter of, 62 N. L. R. B. 973 83
Basic Vegetable Products, Inc., Matter of, 75 N. L. R. B. 815 ..... 44, 94, 97
Bautista v. *Jones*, 25 Cal. 2d 746, 155 P. 2d 343 ..... 73, 77
Bethlehem-Alameda Shipyard, Inc., Matter of, 53 N. L. R. B. 999 83
Bethlehem Steel Co. v. *New York State Labor Relations Board*, 330 U. S. 767 61
Betts v. *Easley*, 161 Kan. 459, 169 P. 2d 831 ..... 72, 77
Blankenship v. *Kurfman*, 96 F. 2d 450 92
E. L. Bruce Co., Matter of, 73 N. L. R. B. 992, 75 N. L. R. B. 522 ..... 43, 44, 83
Burwell's Admr's v. *Fauber*, 21 Gratt. 446 97
Carroll v. *Local No. 269*, 133 N. J. Eq. 144, 31 A. 2d 223 ..... 76, 77, 84
Carter Mfg. Co., Matter of, 59 N. L. R. B. 804 83
Case Co., J. I., v. *National Labor Relations Board*, 321 U. S. 332 63

Cases—Continued

	Page
Clark v. *Curtis*, 297 N. Y. 1014, 80 N. E. 2d 536, affirming 273 App. Div. 797, 76 N. Y. S. 2d 3, reversing 71 N. Y. S. 2d 55	75, 77
Clover Fork Coal Co. v. *National Labor Relations Board*, 97 F. 2d 331	88
Club Transportation Corp., Matter of, 10 N. Y. S. L. R. B. 485	75, 77
Colgate-Palmolive-Peet Co., Matter of, 70 N. L. R. B. 1202, 63 N. L. R. B. 1184	43
Colonial Press, Inc. v. *Ellis*, 321 Mass. 495, 74 N. E. 2d 1	41
Colonie Fibre Co., Inc. v. *National Labor Relations Board*, 69 N. L. R. B. 589, enforced, 163 F. 2d 65	42, 43
Commissioner of Internal Revenue v. *Culbertson*, 337 U. S. 733	96
Consolidated Vultee Aircraft Corporation, Matter of, 71 N. L. R. B. 1350	106
De Silva, In re, 199 P. 2d 6, 23 L. R. R. M. 2085	92
Detroit Gasket & Mfg. Co., Matter of, 78 N. L. R. B. 670	44, 88
Diamond T Motor Car Co., Matter of, 64 N. L. R. B. 1225	43, 94, 99
Dorrington v. *Manning*, 135 Pa. Super. 194, 4 A. 2d 886	76, 77
Dotson v. *International Alliance*, 24 L. R. R. M. 2601	73
Cliffs Dow Chemical Co., Matter of, 64 N. L. R. B. 1419	43
Duquesne Light Co., Matter of, 71 N. L. R. B. 336	106
Durasteel Co., Matter of, 73 N. L. R. B. 941	99, 103
Eaton Manufacturing Co., Matter of, 76 N. L. R. B. 261, enforcement denied, 175 F. 2d 292	44
Elgin, Joliet & Eastern Railway Co. v. *Burley*, 325 U. S. 711	54
Ellis Canning Company, Matter of, 76 N. L. R. B. 99	44, 80
Eureka Vacuum Cleaner Co., Matter of, 69 N. L. R. B. 878	43
Fairbanks, Morse & Co., Matter of, 66 N. L. R. B. 673	106
Fajardo Development Co., Matter of, 76 N. L. R. B. 956	44
Filtrol Corp., Matter of, 74 N. L. R. B. 1307	107
Franks Bros. Co. v. *National Labor Relations Board*, 321 U. S. 702	108
Fur Worker's Union, Local No. 72 v. *Fur Worker's Union, No. 21238*, 105 F. 2d 1, affirmed, 308 U. S. 522	91, 92
Gamble-Skogmo, Inc., Matter of, 75 N. L. R. B. 1068	44
Gauweiler v. *Elastic Stop Nut Corp.*, 162 F. 2d 448	86
General Committee v. *M.-K.-T. R. Co.*, 320 U. S. 323	91
General Instrument Corp., Matter of, 82 N. L. R. B., No. 100, 23 L. R. R. M. 1633	44, 103
Gerry v. *Superior Court*, 194 P. 2d 689, 22 L. R. R. M. 2279	92
Geraldine Novelty Co., Matter of, 74 N. L. R. B. 1503, enforced, 173 F. 2d 14	43, 103
Hamilton v. *National Labor Relations Board*, 160 F. 2d 465, certiorari denied, *sub nom. Kalamazoo Stationery Co.* v. *National Labor Relations Board*, 332 U. S. 762	61

Cases—Continued

	Page
Hamilton-Scheu & Walsh Co., Matter of, 80 N. L. R. B., No. 234, 23 L. R. R. M. 1263	44
Helvering v. *Stockholms Enskilda Bank*, 293 U. S. 84	56
Hill v. *Florida*, 325 U. S. 538	61, 87
Horn Mfg. Co., Inc., Matter of, 83 N. L. R. B., No. 168, 24 L. R. R. M. 1206	44, 71
Hughes Tool Co. v. *National Labor Relations Board*, 147 F. 2d 69	86
Hunt v. *Crumboch*, 325 U. S. 821	53
I. L. U. v. *Sunset Line & Twine Co.*, 77 F. Supp. 119	92
International Brotherhood v. *International Union*, 106 F. 2d 871	92
Interstate Engineering Corp., Matter of, 83 N. L. R. B., No. 16, 24 L. R. R. M. 1031	44, 99
Irwin Auger Bit Co., Matter of, 68 N. L. R. B. 447	106
James v. *Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329	73, 77, 84
Jeffery-DeWitt Insulator Co. v. *National Labor Relations Board*, 91 F. 2d 134, certiorari denied, 302 U. S. 731	90
La Crosse Telephone Corp. v. *Wisconsin Employment Relations Board*, 336 U. S. 18	61
Larus & Brother Company, Matter of, 62 N. L. R. B. 1075	44, 83
Lauf v. *E. G. Shinner & Co.*, 303 U. S. 323	89
Lerner, Joseph, Matter of, 63 N. L. R. B. 810	106
Leterman, Becher & Co., Inc., In re, 260 Fed. 543, certiorari denied *sub nom. Coleman & Co.* v. *Towas Co.*, 250 U. S. 668	96
Lewis Meier & Company, Matter of, 73 N. L. R. B. 520, enforcement denied, 21 L. R. R. M. 2093 (C. A. 7, November 3, 1947)	43, 99, 100, 107, 110
Lincoln Federal Labor Union v. *Northwestern Iron & Metal Co.*, 335 U. S. 525	41, 53
Local 2880 v. *National Labor Relations Board*, 158 F. 2d 365, certiorari granted, 331 U. S. 798, certiorari dismissed on motion of petitioner, 332 U. S. 845	34, 42, 54, 110
Lucke v. *Clothing Cutters and Trimmers' Assembly*, 77 Md. 396, 26 A. 505	76, 77
Lulu, The, 10 Wall. 192	100
May Department Stores Co. v. *National Labor Relations Board*, 326 U. S. 376	63
Mead Corporation, Matter of, 52 N. L. R. B. 1361	43, 80
Medo Photo Supply Corp. v. *National Labor Relations Board*, 321 U. S. 678	63
Miami Copper Co., Matter of, 71 N. L. R. B. 34	107
Monsieur Henri Wines, Ltd., Matter of, 44 N. L. R. B. 1310	44, 50
National Electric Products Corp., Matter of, 80 N. L. R. B., No. 151, 23 L. R. R. M. 1148	44, 71

Cases—Continued

Page

National Labor Relations Board v. *American White Cross Laboratories, Inc.*, 160 F. 2d 75 ..... 42, 54
National Labor Relations Board v. *Appalachian Electric Power Co.*, 140 F. 2d 217 109
National Labor Relations Board v. *Blair Quarries, Inc.*, 152 F. 2d 25 109
National Labor Relations Board v. *Botany Worsted Mills*, 133 F. 2d 876 109
National Labor Relations Board v. *Century Oxford Manufacturing Corp.*, 140 F. 2d 541, certiorari denied, 323 U. S. 714 109
National Labor Relations Board v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292 96
National Labor Relations Board v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217 63
National Labor Relations Board v. *Dadourian Export Corp.*, 138 F. 2d 891 86
National Labor Relations Board v. *Eaton Manufacturing Co.*, 175 F. 2d 292 ..... 43, 54
National Labor Relations Board v. *Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685 58
National Labor Relations Board v. *Entwistle Mfg. Co.*, 120 F. 2d 532 63
National Labor Relations Board v. *Falk Corp.*, 308 U. S. 453 33
National Labor Relations Board v. *Gatke Corporation*, 162 F. 2d 252 109
National Labor Relations Board v. *General Motors Corp.*, 116 F. 2d 306 88
National Labor Relations Board v. *Geraldine Novelty Co., Inc.*, 173 F. 2d 14 ..... 42, 54, 56, 104, 109
National Labor Relations Board v. *Hearst Publications*, 322 U. S. 111 61
National Labor Relations Board v. *Hudson Motor Car Co.*, 128 F. 2d 528 87–88
National Labor Relations Board v. *Indiana & Michigan Electric Co.*, 318 U. S. 9 88
National Labor Relations Board v. *Andrew Jergens Co.*, 175 F. 2d 130, certiorari denied October 10, 1949, No. 225, this Term 70
National Labor Relations Board v. *Pacific Greyhound Lines, Inc.*, 91 F. 2d 458, modified on other grounds, 303 U. S. 272 96
National Labor Relations Board v. *Public Service Transport*, 24 L. R. R. M. 2466 ..... 42, 103
National Labor Relations Board v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874, certiorari denied, 313 U. S. 595 70

Cases—Continued

	Page
National Labor Relations Board v. *Stowe Spinning Co.*, 336 U. S. 226	102
National Labor Relations Board v. *Weissman*, 170 F. 2d 952, certiorari denied, 336 U. S. 972	88
National Labor Relations Board v. *Winona Textile Mills, Inc.*, 160 F. 2d 201	70
National Labor Relations Board v. *Worcester Woolen Mills Corp.*, 170 F. 2d 13, certiorari denied, 336 U. S. 903	109
National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350	70
National Protective Association v. *Cumming*, 170 N. Y. 315, 63 N. E. 369	68
Newman, Matter of, 85 N. L. R. B., No. 132, 24 L. R. R. M. 1463	56
New York Labor Relations Board v. *Club Transportation Corp.*, 24 L. R. R. M. 2274	76, 77
Omnia Co. v. *United States*, 261 U. S. 502	48
Owens-Illinois Glass Co., Matter of, 80 N. L. R. B., No. 141, 23 L. R. R. M. 1191, enforcement denied, — F. 2d —	43, 44, 54, 97
Park & Tilford Import Corporation v. *International Brotherhood, Local No. 848*, 27 Cal. 2d 599, 165 P. 2d 891	73
Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U. S. 177	49
Pillsbury Mills, Inc., Matter of, 74 N. L. R. B. 1113	43, 99, 100
Plant v. *Woods*, 176 Mass. 492, 57 N. E. 1011	68
Portland Lumber Mills, Matter of, 64 N. L. R. B. 159, enforced, 158 F. 2d 365	43
Public Service Corp., Matter of, 77 N. L. R. B. 153, enforced, 24 L. R. R. M. 2466	44
Puritan Ice Co., Matter of, 74 N. L. R. B. 1311, 20 L. R. R. M. 1268	107
Revere Copper & Brass Co., Inc., Matter of, 80 N. L. R. B., No. 220, 23 L. R. R. M. 1244	44, 103
Rheem Mfg. Co., Matter of, 70 N. L. R. B. 57	43
Rutland Court Owners, Matter of, 44 N. L. R. B. 587, 46 N. L. R. B. 1040	29–32, 43, 49, 50, 75, 80
Schwab v. *Moving Pict. Mach. Operators*, 165 Ore. 602, 109 P. 2d 600	76, 77
Schwartz v. *Laundry & Linen Supply Drivers' Union*, 339 Pa. 353, 14 A. 2d 438	76, 77
Securities & Exchange Commission v. *Chenery Corporation*, 318 U. S. 80; 332 U. S. 194	52
Selig Mfg. Co., Inc., Matter of, 79 N. L. R. B., 1144	44
Shinsky v. *O'Neil*, 232 Mass. 99, 121 N. E. 790	77
Shipton, Anderson & Co., In re (1915), 3 K. B. 676	48
Simmons Creek Coal Co. v. *Doran*, 142 U. S. 417	97

Cases—Continued

Page

Southwestern Portland Cement Co., Matter of, 65 N. L. R. B. 1.. 43, 103
Spicer Manufacturing Corp., Matter of, 70 N. L. R. B. 41.. 43, 94, 99
Stanislaus Food Products Co., Matter of, 79 N. L. R. B. 260.. 44, 94
Steele v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192.. 65, 66, 71, 72, 85, 89
Swift and Company, Matter of, 71 N. L. R. B. 727.. 107
Switchmen's Union v. *National Mediation Board*, 320 U. S. 297.. 91
Texas & N. O. R. Co. v. *Brotherhood of Ry. and S. Clerks*, 281 U. S. 548.. 91
Thomas Truck and Caster Co., Matter of, 72 N. L. R. B. 847.. 107
Thompson v. *Moore Drydock Co.*, 27 Cal. 2d 595, 165 P. 2d 901.. 73, 77
Trailer Company, Matter of, 51 N. L. R. B. 1106.. 83, 107
Trailmobile Co. v. *Whirls*, 331 U. S. 40.. 54
Tunstall v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210.. 89
United Brick & Clay Workers of America v. *Junction City Clay Company*, 158 F. 2d 552.. 92
U. E. R. and M. W. v. *I. B. E. W.*, 115 F. 2d 488.. 89, 91, 92
United Engineering Co., Matter of, 84 N. L. R. B., No. 10, 24 L. R. R. M. 1213.. 44, 99
United States v. *Hutcheson*, 312 U. S. 219.. 90
Utica & Mohawk Cotton Mills, Inc., Matter of, 51 N. L. R. B. 257.. 44, 80
Virginian Railway Co. v. *System Federation No. 40*, 300 U. S. 515.. 89, 91
Wallace Corporation, Matter of, 50 N. L. R. B. 138, enforced, 141 F. 2d 87, affirmed, 323 U. S. 248.. 35, 36, 42, 43–53, 79, 85
Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union (CIO) v. *National Labor Relations Board, et al.*, 337 U. S. 915.. 2
Washington Lodge Local No. 104 v. *International Brotherhood of Boilermakers*, 203 P. 2d 1019, 23 L. R. R. M. 2578.. 84
Waterfront Employers Association, Matter of, 71 N. L. R. B. 80.. 106
Westinghouse Electric Corp., Matter of 80 N. L. R. B., No. 143, 23 L. R. R. M. 1181.. 44, 97, 103
Williams v. *International Brotherhood of Boilermakers*, 27 Cal. 2d 586, 165 P. 2d 903.. 73, 75, 77
Williams v. *Quill*, 277 N. Y. 1, 12 N. E. 2d 547.. 74
Wills v. *Local 106, Hotel & Rest. Employees*, 26 Ohio N. P. (N. S.) 435.. 76, 77
Wilson v. *Newspaper & Mail Deliverers' Union*, 123 N. J. Eq. 347, 197 A. 720.. 76, 77

Statutes: Page

National Industrial Recovery Act (48 Stat. 195, 198–199), Section 7 (a) 58

National Labor Relations Act, 1935 (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*):

Section 1 42
Section 2 90
Section 7 ..... 42, 62, 111
Section 8 62
Section 8 (1) 40, 101
Section 8 (3) 35, 36, 40, 56–58, 93
Section 9 (a) 70, 112
Section 9 (c) 112
Section 10 (c) 112
Section 10 (e) 113

National Labor Relations Act, as amended by Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*):

Section 2 90
Section 7 114
Section 8 (a) (3) 114
Section 8 (a) (3) (A) 55, 114–115
Section 8 (a) (3) (B) 55, 98, 114–115
Section 8 (b) (2) 55, 115
Section 9 (a) 116
Section 9 (c) (1) 116
Section 9 (e) 117
Section 10 (c) 56
Section 10 (e) 118
Section 101 114
Section 102 ..... 40, 119

New York State Labor Relations Act, Laws of New York, 1937, Chap. 443, 30 McKinney's Consol. Laws of New York, Labor Law, Section 704 (5) 74

Norris-La Guardia Act (47 Stat. 70, 29 U. S. C. 101) 88

Railway Labor Act (44 Stat. 577, 45 U. S. C. 151, *et seq.*) 65, 66

Miscellaneous:

The Closed Shop and Union Security, Economic Brief of American Federation of Labor, sumitted in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Company*, 335 U. S. 525 79

Comment, *Effect of Section 7 (a) of NIRA on the Validity of A Closed Union-Shop Contract*, 44 Yale L. J. 1067 (1935) 58, 68

Comment, 56 Yale L. J., 1048, 1051 (1947) 42, 50

79 Cong. Rec. 7570, 7659–7660, 7673 ..... 60, 69

79 Cong. Rec. 9717 61

93 Cong. Rec. 1825 55

Miscellaneous—Continued

Page

Despres, *The Collective Agreement for the Union Shop*, 7 U. of Chi. L. Rev. 24, 25–26 (1939) 41, 68

Dodd, *Discrimination by Labor Unions in the Exercise of Statutory Bargaining Powers*, 58 Harv. L. Rev. 448, 452 (1945) 51, 72

H. R. 3020, 80th Cong., 1st Sess., Legislative History of the Labor-Management Relations Act, 1947 (Gov't. Print. Office, 1948), p. 238 55

H. Rep. No. 1147, 74th Cong., 1st Sess., 19–20, 20–21, 22 ... 55, 60, 64, 71

National Labor Relations Board, Third Annual Report (Gov't. Print. Office, 1939), pp. 134–136 104

National Labor Relations Board, Fourth Annual Report (Gov't. Print. Office, 1940), p. 75 104

National Labor Relations Board, Eleventh Annual Report (Gov't. Print. Office, 1947), p. 14 107

National Labor Relations Board, Twelfth Annual Report (Gov't. Print. Office, 1948), pp. 10, 9–14 ..... 106, 107

National Labor Relations Board, Thirteenth Annual Report (Gov't. Print. Office, 1949), pp. 29, 29–32 106

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Restatement, Contracts, Section 608 48

S. Rep. No. 573, 74th Cong., 1st Sess., pp. 11–12, 13–14 .. 59, 64, 65, 85

S. Rep. No. 105, 80th Cong., 1st Sess 55, 101

Summers, *The Right to Join a Union*, 47 Col. L. Rev. 33 (1947) 84

15 University of Chicago Law Review, 232 (1947) 42

33 Virginia Law Review, 521 (1947) 42

Willcox, *The Triboro Case—Mountain or Molehill?*, 56 Harv. L. Rev. 576, 585–587, 592–596 (1943) 68

4 Williston, Contracts (Rev. Ed.), Sec. 1157 (1936) 95

6 Williston, Contracts (Rev. Ed.), Sec. 1759 48

Witmer, *Collective Labor Agreements in the Courts*, 48 Yale L. J. 195, 221 (1938) 68

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 47

COLGATE-PALMOLIVE-PEET COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, INTERNATIONAL CHEMICAL WORKERS UNION, A. F. L., ET AL., AND WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (C. I. O.)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. IV, 990–992), is reported in 171 F. 2d 956. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. I, 68–85) are reported in 70 N. L. R. B. 1202.

JURISDICTION

The decree of the court below (R. IV, 993–996) was entered on January 13, 1949. The Com-

pany's petition for rehearing was denied February 4, 1949 (R. IV, 997). The Company's petition for a writ of certiorari was filed on April 4, 1949, and was granted on May 31, 1949, "limited to the question of the construction of Section 8 (3) of the National Labor Relations Act of 1935 (49 Stat. 449, 29 U. S. C., Sec. 158 (3)) in relation to this case" (337 U. S. 913).[1] The jurisdiction of this Court is invoked under Section 1254 of 28 U. S. C., and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

The Labor Board found that an employer having a closed-shop agreement with a union discharged certain employees at the Union's demand; that the employer knew that the Union's purpose was to punish these employees for engaging in activities on behalf of a rival union; and that such activities were carried on by the employees during a period when it was lawful and proper for them to do so. The question presented is whether, notwithstanding these findings, the Board is precluded by the proviso to Section 8 (3) of the National Labor Relations Act of 1935

[1] At the same time the Court denied the petition for a writ of certiorari filed by Warehouse Union Local 6, International Longeshoremen's & Warehousemen's Union (CIO), which sought to raise other questions in connection with this case. *Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union (CIO)* v. *National Labor Relations Board, et al.*, October Term, 1948, No. 695, 337 U. S. 915.

from finding the employer to have committed an unfair labor practice.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act of 1935 (49 Stat. 449, 28 U. S. C. 151, *et seq.*) and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*) are set forth in the Appendix, *infra,* pp. 111–119.

STATEMENT

Upon a second amended charge (R. I, 1–4), duly filed by the International Chemical Workers Union, A. F. L., herein called the A. F. L., the Board on January 18, 1946, issued its complaint alleging, among other things, that Colgate-Palmolive-Peet Company, herein called the employer, had discharged and refused to reemploy thirty-eight named employees because of their activity on behalf of the A. F. L. and a predecessor labor organization, Colgate-Palmolive-Peet Employees' Welfare Association (R. I, 7–8, 4–10). The employer filed an answer averring, among other things, that these employees had been discharged pursuant to a valid closed-shop agreement with Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), herein called the C. I. O.; and that the discharges have been made at the request of the C. I. O. upon its representation that the employees had been suspended by it and were no longer members

in good standing (R. I, 11–14, 10–15). A hearing upon the complaint, in which the A. F. L. and C. I. O. participated, was held before a trial examiner of the Board from February 4 to 8, 1946 (R. I, 21). On March 27, 1946, the trial examiner issued his intermediate report (R. I, 17–68). On September 6, 1946, the Board issued its decision and order (R. I, 68–85). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[2]

I

The Board's Findings of Fact

A. THE CLOSED-SHOP AGREEMENT BETWEEN THE EMPLOYER AND THE C. I. O.

On July 9, 1941, the employer and the C. I. O. entered into a contract covering the production and maintenance employees at the employer's plant in Berkeley, California. This contract contained the usual terms of a collective agreement, and provided that it was to "remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives" (R. I, 69, 23–25; R. III, 788). Section 3 of the agreement required that new employees be hired through the offices of the C. I. O., or, in the event that the

[2] In the following statement, record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

C. I. O. was "unable to furnish competent workers", that new employees apply for membership in the C. I. O. within fifteen days of their employment; and it further required as a condition of employment that employees "be members in good standing" of the C. I. O. (R. I, 69, 24; R. III, 787–788, R. I, 223). On July 24, 1945, a supplemental agreement was entered into which extended the 1941 contract by providing that it should "remain in full force and effect" pending the approval or disapproval by the Tenth Regional War Labor Board of certain changes (R. I, 69, 25; R. III, 788–789, R. I, 223).

The C. I. O. local admitted to membership employees of other employers (R. I, 26, n. 5; R. I, 187). None of its officers was an employee of the Colgate-Palmolive-Peet Company and the day-to-day administration of its contract with the Company was handled by five plant stewards who were employees and who were elected for that purpose by their fellow-employees (R. I, 218–220, 286). In July 1945 the five C. I. O. plant stewards were Haynes, Luchsinger, Marshall, Moreau, and Smith (R. I, 26; R. I, 193).

B. THE EMPLOYEES' DISSATISFACTION WITH THE C. I. O. AND THE PRELIMINARY STEPS TAKEN BY THEM TO CHANGE REPRESENTATIVES

Dissatisfaction with the representation accorded them by the C. I. O. had been brewing among the employees for about six months before the extension of the closed-shop agreement (R. I,

25; R. I, 225–226, 209).[3] During this period, the five plant stewards expressed their discontent with the C. I. O. officials to Charles Wood, the employer's Labor Relations Director (R. III, 758–759). On July 20, 1945, four days before the collective agreement was extended Steward Marshall in a conversation with B. W. Railey, the employer's vice-president (R. I, 181), asked that the five stewards be present when the extension was signed because of impending labor troubles at the plant due to the employees' unrest (R. I, 188–189, 225–226).

Some time in July, the five C. I. O. stewards communicated with District 50 of the United Mine

[3] Judged by the ensuing campaign literature of the employees who sought to displace the C. I. O. as their bargaining representative, their dissatisfaction with the C. I. O. stemmed from their belief that the wage rates were too low (R. III, 813, 828, 836–837, 842, R. II, 391–394); that a vacation issue had been inadequately processed (R. III, 811); that seniority was ignored (R. III, 832–833); that sick and death benefits were maladministered (R. III, 838–839); that shift differential pay and free meals for overtime work had not been obtained (R. III, 842); that equal pay for equal work for women had not been procured (R. III, 823, 828, 829, 837); that an insufficient back pay award had been secured for shift workers and women (R. III, 828–829); that dues were too high (R. III, 819, 824, 838, 839); that there was too little responsiveness by officers to employees' wishes, too little local autonomy in the plant, and too little control by employees over meetings and union affairs (R. III, 809–810, 820–821, 822, 838, 840). The dissatisfied employees vehemently denied that their proposed union discriminated against Negroes, accusing the C. I. O. of injecting a racial issue into the campaign as a devisive tactic (R. III, 808–809, 811–812, 824, 826, 827, 831, 836, 841, 844).

Workers of America and discussed with its representatives the possibility of transferring the affiliation of the Company's employees to that organization (R. I, 25–26; 190, 209, 237–240). On July 26, 1945, the five C. I. O. stewards, for the purpose of organizing employee sentiment into effective action in opposition to the C. I. O., arranged a dinner at which twenty-four other employees were also present (R. I, 26; R. I, 189–191, 208–210, 255). At this dinner it was decided to call an open meeting on July 30, 1945, for the employees at large, to discuss a change in bargaining representatives to be undertaken initially by the formation of a temporary organization known as the Employees Welfare Association (R. I, 26; R. I, 189–191, 208–210, 255).

On July 28, 1945, a "notice of meeting" was posted on the bulletin boards throughout the plant inviting "all those interested in joining Employees Welfare Association" to be present at a neighboring meeting hall "at 4:15 p. m., Monday, July 30, 1945" (R. I, 69, 27; R. I, 191–192, 255–256). On the same day, Superintendent Altman knew of the posting and, upon receiving a telephone call from Labor Relations Director Wood asking "if anything unusual had happened," discussed the notice with him (R. III, 667–668, R. I, 255–256). Thereafter Steward Luchsinger and employee Olsen visited Superintendent Altman at his office, and obtained Altman's agreement to shut down the plant for two hours so that the night shift em-

ployees could attend the meeting (R. I, 69–70, n. 2; R. I, 268–269). The Board concluded that the employer would not have authorized so important an interruption in the plant's operations without ascertaining the purpose of the meeting (R. I, 69–70, 77).

C. THE EMPLOYER, KNOWING THE C. I. O.'S DISCRIMINATORY PURPOSE, ACCEDES TO THE C. I. O.'S REQUEST TO DISCHARGE THE STEWARDS AND THE COMMITTEEMEN FOR THEIR LEADERSHIP OF THE RIVAL UNION ACTIVITIES

On July 30, 1945, the same day for which the rival organizational meeting was scheduled, the C. I. O. requested and obtained the discharge of the five stewards who were leading the employees' organizational efforts (R. I, 70, 29; R. III, 806–807, R. II, 654–656). In the early afternoon of that day, four C. I. O. officials, who were not employees of the Company, called upon Superintendent Altman at his office (R. I, 27; R. III, 667). The C. I. O. officials handed Superintendent Altman a letter which requested the discharge of the five duly-elected plant stewards, including Steward Luchsinger who had obtained Altman's agreement to shut down the plant. The letter stated "that charges have been preferred" against these employees "and that they have been suspended from membership" in the C. I. O. "pending a trial" (R. I, 27–28; R. III, 668–669, 784–785, R. I, 259, 256). Superintendent Altman hurried to Vice President Railey's office (R. III, 669). The two returned to Altman's office (R.

II, 522, R. III, 669), and the five stewards were summoned (R. III, 670, R. II, 524). Vice-President Railey thereupon discharged the stewards, informing them that under the terms of the closed-shop agreement he was obliged upon demand to terminate their employment until they were restored to good standing by the C. I. O. (R. I, 70, 29; R. I, 194, 256–257, 288–289). Each of the stewards was given a letter by the C. I. O. officials (R. I, 29; R. II, 525, 670, R. I, 193). The stewards thereupon left Altman's office (R. I, 29; R. I, 195, R. II, 525, R. III, 670–671). The letters notified the stewards that they were suspended from membership in the C. I. O. pending a union trial upon unspecified charges alleging the violation of the C. I. O.'s Declaration of Principles, Oath of Membership, and Article 9, Section 1 of the C. I. O. Constitution and By-Laws (R. I, 70; R. III, 847–848, R. I, 229, R. III, 853–856, R. II, 617).

Immediately following the discharge of the five stewards, the C. I. O. representative distributed throughout the plant a bulletin reading (R. I, 70, 31–32; R. I, 256, R. III, 785, R. I, 259):

ATTENTION

All Ware House Union Members:

An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

WARNING

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

GENERAL EXECUTIVE BOARD,
Warehouse Union,
Local #6, I. L. W. U.

That afternoon, according to Vice President Railey, the factory was "in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done" (R. I, 36; R. II, 528).

Of the 313 production and maintenance employees (R. I, 61, n. 30; R. II, 421–422), more than 200 attended the scheduled anti-C. I. O. meeting (R. I, 70, 32; R. I, 196, 256). Two major decisions were made. It was unanimously resolved to break relations with the C. I. O. and to form an independent union, known as Employees Welfare Association, until affiliation with a strong international union could be accomplished (R. I, 70, 32; R. I, 196, 200–201, 261, 288, R. III, 848, R. I, 259). It was also unanimously agreed that four employees, Thompson, Sherman, Lonnberg, and Olson, designated committeemen and elected to act as officers of the interim organization, should seek the reinstatement of the discharged stewards, and that should they fail in their quest, all the employees would in protest cease working

(R. I, 70, 33; R. I, 196, 199, R. III, 849, R. I, 259). Upon the close of the meeting the four committeemen dispatched the following telegram to Vice President Railey (R. I, 70–71, 34; R. I, 257, R. III, 786-787, R. I, 259):

> You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. All being former members of ILWU 1–6 and being more than 50 percent of total employees have withdrawn and severed relations with ILWU–6 as collective bargaining agent.
>
> EMPLOYEES WELFARE ASSOCIATION,
> By NEGOTIATING COMMITTEE,
> E. H. THOMPSON.
> WILLIAM SHERMAN.
> H. LONNBERG.
> L. OLSON.

A telegram of similar purport was sent to the C. I. O. (R. I, 33–34; R. I, 257, R. III, 786, R. I, 259).

On the following morning, July 31, 1945, the four committeemen called upon Vice President Railey at his office, and unsuccessfully urged the reinstatement of the five discharged stewards (R. I, 71; R. I, 257, R. II, 360–361). Railey persisted in his position that under the closed-shop agreement he had no choice but to comply with the C. I. O.'s demand (R. I, 34; R. I, 257). He was told that he would shortly receive a telegram indicating the employees' wish that the C. I. O.'s authority to act on their behalf be

terminated, and during the conversation the telegram which had been dispatched the previous evening was in fact received by Railey (R. I, 71, 35; R. II, 368–369, 377–378).

Meanwhile, Superintendent Altman joined the conference stating that a group of C. I. O. officials were presently in his office (R. I, 35; R. II, 257). They were invited into Railey's office (R. I, 35; R. II, 361, 527). An acrimonious debate ensued between Committeeman Sherman and C. I. O. President Lynden during which Lynden sought to justify the C. I. O. wage policy (R. I, 35; R. II, 545–546, 528). Vice President Railey in his testimony agreed that "it became quite apparent as this conversation took place that there was a schism developing in the ranks of the C. I. O." (R. II, 545–546). Indeed, at this very conference, the C. I. O. officials, in the presence of the employer's ranking officials, bluntly informed the four committeemen that suspension notices for three of them were already in preparation, and requested the name of the fourth one, Olson, so that they could prepare such notice for him (R. I, 71; R. I, 263–264). Later that morning the employer received a formal request from the C. I. O. notifying it of the suspension of Thompson, Sherman, Lonnberg, and Olson from membership in the C. I. O. and requesting their discharge (R. I, 71, 36–37; R. III, 673–675, 846–847).

That same morning, C. I. O. representatives circulated another bulletin among the employees at the plant (R. I, 71, 37; R. I, 257). The leaflet warned the employees against aligning themselves with "Sherman-Marshall-Lundeberg & Co.," lest they jeopardize "their own reputation, their union standing, their seniority, and their jobs," and pointedly referred them to "the provisions of the union contract, including the requirement that only members of Warehouse Union, Local #6, ILWU, in good standing may be employed by the company" (R. I, 71, 37–38; R. III, 789, R. I, 259). Despite this warning, a majority of the employees, upon learning of the refusal to reinstate the five stewards, at noon left the plant in order to hold a second anti-C. I. O. meeting (R. I, 71, 38; R. I, 257). Vice President Railey, who attended the meeting upon invitation, addressed the employees, stating that the reinstatement of the stewards was impossible because of the employer's contractual obligation under the collective agreement (R. I, 72, 38–39; R. I, 257–258, R. II, 529–531). Dissatisfied with Railey's explanation, and having failed in their effort to secure the reinstatement of the stewards, the employees in protest voted to reaffirm their resolution not to return to work (R. I, 72, 38–39; R. I, 202, 258, 266, R. III, 850–851, R. I, 259). The strike lasted two and one-half days, and most of the workers participated in it (R. I, 72, 39; R. III, 677, R. II, 533).

Two days later, on August 2, 1945, a third anti-C. I. O. meeting was held, again attended by a substantial majority of the employees, at which it was voted to dissolve Employees Welfare Association, to affiliate with International Chemical Workers Union, A. F. L., herein called the A. F. L., and to return to work the following morning pending an election among the employees to be requested of the National Labor Relations Board (R. I, 72, 40; R. I, 258, R. III, 851–852, R. I, 259). The next morning, all the employees returned to work except the five stewards, who had been previously discharged, and the four committeemen who had been told the day before by Superintendent Altman that in view of their suspension it would be futile for them to report to work (R. I, 72, 39–40; R. I, 258, 266–268, R. II, 378, R. III, 806–807, R. II, 654–656).

D. THE EMPLOYER'S KNOWLEDGE OF THE C. I. O.'s PURPOSE OF RETALIATING AGAINST EMPLOYEES ACTIVELY SUPPORTING THE RIVAL UNION

The initial organizational efforts of the insurgent employees culminating in the discharge of the stewards and the committeemen at the C. I. O.'s request were followed by intensified organizational efforts to which the C. I. O. retaliated with further discharge-demands under the closed-shop contract. The events preceding its accession to the C. I. O.'s demands furnished the employer with additional information apprising it of the C. I. O.'s discriminatory purpose.

Upon the completion of affiliation with the A. F. L., steps were undertaken by it to secure a change of representatives by resort to formal Board processes. On August 3, 1945, the A. F. L. filed a petition for the investigation and certification of representatives. On August 8, 1945, the A. F. L., the C. I. O., and the employer met informally to discuss the petition at a preliminary conference at the Board's regional office in San Francisco. Notice of formal hearing was issued on August 14, 1945, was received by the employer on August 17, 1945, and the hearing was held on August 22, 1945 (R. I, 72, 73, 41, 45; R. II, 549–552, R. III, 799–805.)[4]

In addition to the A. F. L.'s invocation of the Board's election machinery to resolve the representation question, the A. F. L. invoked the Board's processes for the redress of unfair labor practices in order to remedy the dismissal of the stewards and the committeemen. On August 13, 1945, the A. F. L. verified, and the next day filed, the original charge alleging the discriminatory dismissal of the stewards and the committeemen

[4] Pursuant to the Board's Decision and Direction of Election issued on September 26, 1945, an election was held on October 16, 1945, at which the A. F. L. was defeated 181 to 126 (R. I, 75; R. II, 549–552, R. III, 799–805). Thereafter, upon objections to the election filed by the A. F. L., the election was set aside by the Board because the employer's discharge of employees at the C. I. O.'s request for protected union activities prevented the result of the election from being truly representative of the employees' untrammeled wishes (R. I, 75, 79, 83).

(R. I, 72; R. I, 92–93). Because of the Board's practice promptly to inform persons of charges filed against them, the Board inferred that the employer was apprised of this charge by August 17, 1945 (R. I, 77–78). The employer admittedly knew of it on August 22, 1945 (R. I, 107).

Upon the employer's notification on August 8, 1945, of the filing by the A. F. L. of a petition for certification of representatives, Vice President Railey agreed that it was readily apparent that a campaign for the employees' favor was being conducted by the A. F. L. and the C. I. O. (R. I, 72; R. II, 547). Labor Relations Director Wood in his daily tours of the plant was handed union literature which was being circulated in profusion throughout the plant, and he observed the A. F. L. buttons which the employees were wearing on their work clothes (R. III, 759–761). This campaign was open, widespread, and intense (R. I, 72, 41; R. I, 299–301, 305–314, 330–332, R. II, 344, 387–388, 391–394, 411–414, 430–431, 433–436, 438–439, 475–478, 481–488, 516, 564, 566, 580–581, 583–584, 592–594, 598, 607, 608–612, 631–632, 642, R. III, 785, 789–790, R. I, 259, R. III, 794–798, 808–847). The C. I. O., in the conduct of its campaign, both orally and through leaflets, made clear that the price of adherence to the A. F. L. was discharge under the closed-shop contract (R. I, 72, 77, 43–44; R. I, 299–300, 305–314, R. II, 438–439, 475, 481–488, 516, 564, 580–581, 592–594, 598, 608–609, 631–632, 642, R. III, 785, 789–790, R. I, 259, R. III,

794–798, R. II, 476–477). Aware of the C. I. O.'s retaliatory campaign, Labor Relations Director Wood conceded that he knew that the C. I. O.'s subsequent discharge demands were motivated in part at least by the "union activities" of the A. F. L. adherents (R. I, 78, 49; R. III, 737).[5] Illustrative of the C. I. O.'s campaign was its leaflet, widely distributed throughout the plant and posted on a plant bulletin board on August 22, 1945, the day of the hearing on the A. F. L.'s election petition, warning the employees of discharge for pro-A. F. L. or anti-C. I. O. activity (R. I, 73; R. III, 769, 798, R. II, 476–478). The leaflet read in part:

* * * * *

6. Only members of the Warehouse Union Local 6, work at Colgate Palmolive

[5] It is unlikely that any notable aspect of employee thinking escaped managerial attention. In the discharge of their managerial duties, Superintendent Altman and Labor Relations Director Wood, top-ranking officials at the employer's Berkeley plant (R. I, 180–182), made daily tours of the plant (R. III, 696–697, 757–758). One of the bulletin boards upon which employees posted notices is in the immediate vicinity of the offices of the managerial staff (R. I, 191–192). Superintendent Altman passes by this bulletin board several times each day, and generally reads any new notices placed on the board (R. III, 686–687). In making his daily rounds Labor Relations Director Wood occasionally talks with the employees (R. III, 758), observes the matter placed on the various bulletin boards (R. III, 759), and during the course of the union electioneering received union literature (R. III, 759–760). Lesser supervisory officials, being in more immediate contact with the employees, necessarily have an even more intimate knowledge of employee opinion.

Peet Company. If anyone says different—let him test it.

7. Any Peet's employee reported as trying to get people to bolt the C. I. O. and join the A. F. L. or wearing an A. F. L. button, will be taken off the job.

* * * * *

10. As a result of the investigation last week, we have found it necessary to consider the removal of several more of the ringleaders who have violated all of our rules.

* * * * *

We suggest: If you value your future at Colgate Palmolive Peet; if you enjoy your present job; if you would like to retain your seniority and pension, and receive the retroactive pay due you, we advise you to think carefully about everything told you—then tell the A. F. L. disrupters that you are not interested in their form of phoney unionism.

WAREHOUSE UNION, LOCAL 6, ILWU.

The C. I. O.'s retaliatory campaign was marked by threats to individual A. F. L. adherents. On the afternoon of August 11, 1945, a C. I. O. official remonstrated with employee Albert Zulaica, subsequently discharged on September 1 under the closed-shop contract (R. I, 74; R. III, 792, 806; R. II, 654–656, *infra*, pp. 23–25), for his active advocacy of the A. F. L., warning him that such conduct by the employees would lead

to their dismissal (R. I, 41; R. I, 305–310). In reply to Zulaica's assertion that "if you start doing that you will have to throw the majority out because most of them are wearing an A. F. L. button," the C. I. O. official stated, "we don't have to do that. * * * We can pick some of you out and claim that you were leaders, and that will scare the rest of them" (R. I, 42; R. I, 309–310). On the following Monday morning, August 13, 1945, Zulaica reported the gist of this conversation to his foreman asking him to talk to the superintendent or assistant superintendent about it. That afternoon Assistant Superintendent Stanberry told Zulaica "I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union." (R. I, 73; R. I, 310–312.)

On August 31, 1945, a C. I. O. official approached employee Kay Norris in the plant (R. I, 74; R. II, 483–484). On the previous day, this C. I. O. official on plant premises had warned Norris to desist from campaigning on behalf of the A. F. L. (R. II, 480–482). Referring to this earlier conversation, the C. I. O. official asked Norris whether she "had changed * * * [her] mind," that he had given her "time to go home and think it over," and was she ready to "drop

A. F. of L. and stick by C. I. O." (R. I, 74; R. II, 484). Upon being told that she had not changed her mind, he said "I held out a letter for you until today * * * You are fired. You might as well get off the floor right now" (R. I, 74; R. II, 484). Norris immediately reported to Assistant Superintendent Stanberry that "that union fellow kicked me off the floor. He told me I was fired" (R. I, 74; R. II, 484, 485). Stanberry replied, "He can't do that" (R. II, 484). Norris then attempted to report the incident to Superintendent Altman, but on finding him out of his office reported it to another person in the office who told her to ignore the statement and return to work (R. I, 74; R. II, 485). As hereinafter more fully related (pp. 23–25, *infra*), on the next day, September 1, Norris and seventeen others were discharged under the closed-shop contract (R. I, 74; R. III, 792, 806–807, R. II, 654–656).

E. THE EMPLOYER, KNOWING THE C. I. O.'s RETALIATORY PURPOSE, ACCEDES TO ITS REQUEST TO DISCHARGE THE TWENTY-EIGHT ADDITIONAL EMPLOYEES FOR THEIR RIVAL UNION ACTIVITIES AND REFUSES TO REEMPLOY THE STEWARDS AND THE COMMITTEEMEN

In addition to the discharge of the five stewards and the four committeemen, whom the employer subsequently refused to reemploy upon their request, the C. I. O. secured the dismissal of twenty-eight additional employees pursuant to the closed-shop agreement (R. I, 74; R. III, 806–807, R.

II, 654–656). All of the discharged employees had joined the A. F. L., worn A. F. L. buttons prominently in the plant, taken an active role in A. F. L. organizational activities, and participated in the two and a half days' work stoppage (R. II, 656–657, 506–507). All of them, with two exceptions,[6] attended the meetings of July 30, 31, and August 2, 1945, and concurred in the actions taken at these meetings (R. II, 506). Their discharge, and the refusal to reemploy the stewards and the committeemen, occurred under the following circumstances:

1. *The refusal to reemploy the stewards and the committeemen on August 17*

On August 17, 1945, the five stewards and the four committeemen reported to work, but their request for reinstatement was denied (R. I, 73; R. I, 267–268, 289–290, R. II, 341–342, 380–381, 427, R. III, 679–680, 699–700). Labor Relations Director Wood stated that "I fell back on our legal advice" and represented to the discharged employees that under the closed-shop contract the employer was under an absolute duty to abide by the C. I. O.'s wishes (R. I, 73; R. III, 727–728). They were told by Wood that "You will have to remain out until the issue has been determined between you and the C. I. O." (R. I, 73; R. III, 728).

[6] The complaint was dismissed insofar as it related to the third exception, Rose Gilbert (Schneider) (R. I, 74, 21).

2. *The C. I. O. request for the discharge of seventy employees on August 30*

On August 30, 1945, a C. I. O. official visited Labor Relations Director Wood at his office and demanded the discharge of an estimated seventy employees, about one-fifth of the working force, upon the asserted ground that they were not members of the C. I. O. in good standing (R. I, 73–74; R. III, 728–731). Wood told him, "Go to hell * * * I [am] * * * not going to act on any such order * * *. This thing has gone too far. You are getting too many people involved here. Why, the first thing you know, if this keeps on, we will be shut down * * * I want to talk to [C. I. O. Vice President] Heide about this thing before we get into this thing any deeper" (R. I, 74; R. III, 730). After a discussion with Heide, this particular request was evidently withdrawn (R. I, 74; R. III, 730).

3. *The discharge of six employees on August 31*

On the morning of August 31, 1945, the C. I. O. requested and obtained the discharge of six employees pursuant to the closed-shop agreement (R. I, 46; R. III, 806–807, R. II, 654–656). The discharges were effected in conjunction with a wholesale inspection of the employees' union dues books.[7] This inspection was conducted by C. I. O.

[7] It was stipulated at the hearing that the C. I. O. did not request the discharge of any of the stewards, the committeemen, or the twenty-eight additional employees because of

officials in the vicinity of the entrance to the plant during the time when the employees were reporting to work on the morning shift (R. I, 46; R. III, 681–682, 709–716). Superintendent Altman and Assistant Superintendent Carter were present to observe the event (R. III, 681–682, 710–711). Assistant Superintendent Carter saw the C. I. O. officials hand envelopes to some of the employees, and heard them tell these employees that they could not report to work (R. III, 715–716). One employee who received a suspension notice was told, "Here is a letter for you, and you are fired. You cannot work here anymore. * * * You go to your A. F. of L. friends to help you now" (R. II, 516). Another suspended employee who received a notice was told, "take it back to your union, see if they can put you back to work, you are so crazy about them" (R. II, 564).

4. *The discharge of eighteen employees on September 1*

On September 1, 1945, the C. I. O. requested and obtained the discharge of eighteen more employees pursuant to the closed-shop contract (R. I, 74, 46–47; R. III, 806–807, R. II, 654–656). On that day, the C. I. O. delivered a letter to the employer stating that these eighteen employees had been suspended from membership in the

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delinquency in the payment of union dues to the C. I. O. (R. II, 518–519).

C. I. O. and requesting their discharge (R. I, 46–47; R. III, 792, R. I, 315, R. III, 684, R. II, 534). After a conference among the employer's officials, it was decided to call the designated employees into Vice President Railey's office to inform them that their employment was terminated (R. I, 47; R. III, 732–734, R. I, 313–316, R. II, 534–535, 567–568, 572–573, 620–621). The eighteen were called in and Labor Relations Director Wood reiterated to the assembled employees the management's position that it was under an absolute duty under its closed-shop contract to discharge them upon demand of the C. I. O. (R. I, 47; R. III, 735). A turbulent session ensued, during which employee Norris, whose discharge was requested, expressed her conviction that the employees were dismissed because "we wore A. F. of L. buttons and we distributed literature," to which Wood replied, "I guess it is so, that could be it" (R. II, 488). She further testified that Wood stated, "We talked too much, that if we had kept our mouths shut we wouldn't have got into this mess" (R. II, 488–489). Another employee testified that Wood said, "If you had kept this quiet about the AFL this wouldn't have happened to you" (R. I, 316). A third employee testified that Wood said, "If we [the discharged employees] didn't wear the AFL buttons and didn't talk too much, why, we wouldn't get in this trouble in the first place" (R. II, 577).

One of the assembled employees complained, "I don't see why we can't change from one union to another" (R. II, 492).

5. *The discharge of four employees on September 5, 7, and 11*

Several days later, four additional employees were dismissed pursuant to the closed-shop contract: employee Franklin Richmond was discharged on September 5, employees Manuel Alegre and John Perucca on September 7, and employee Edward Navarro on September 11 (R. I, 50, and n. 20; R. III, 806–807, R. II, 654–656).

About September 1, 1945, employee Franklin Richmond, while wearing an A. F. L. button on his work clothes, was approached in the plant by a C. I. O. official who demanded to see his union book (R. I, 51; R. II, 630–631). Richmond walked over to his supervisor and asked whether "this goon had any right to come in here and demand to see my book merely because I have got a button on." His superior replied, "Well, he can ask to see your book, is all." Upon receiving the union book, the C. I. O. official noted its number. Richmond stated, "Now I suppose I will get one of your letters?" He was told, "You will!" And he did. (R. I, 51–52; R. II, 631–632.) Several days thereafter Superintendent Altman informed Richmond that he was required to discharge him because he had been

named in the C. I. O. notice of suspension (R. II. 632–635). Richmond told Altman "that for every one of us that were laid off like that, for wearing those buttons, he was going to have some kind of charge placed against him" (R. II, 634).

Edward Navarro, together with three or four other machinists employed at the plant, were members of a C. I. O. union, the East Bay Union of Machinists, Local 1304, and because of their membership in the Machinists' Union all of them were permitted to work at the plant without obtaining membership in the C. I. O. local at the plant (R. I, 52; R. II, 641–642, 645–646). About September 4, 1945, Labor Relations Director Wood told Navarro that it would be necessary for him to transfer to the C. I. O. local at the plant (R. II, 642). He applied for a transfer but the C. I. O. local in the plant refused to grant it because he "was wearing an A. F. of L. button in the plant" (R. II, 642). The employer thereupon discharged him (R. I, 50, and n. 20; R. III, 806–807). The other machinists, however, were permitted to continue to work without obtaining membership in the C. I. O. local at the plant (R. II, 646).[8]

[8] There is no difference in principle between the refusal to qualify an employee for membership in a union because of his protected activities on behalf of a rival union and the withdrawal from an employee of his good standing in a union because of his protected activities on behalf of a rival union.

F. THE C. I. O.'s SUBSEQUENT TRIAL OF THE DISCHARGED EMPLOYEES

Subsequent to their discharge, the five stewards, the four committeemen, and the twenty-eight additional employees were tried before C. I. O. tribunals. The transcripts of the proceedings before the C. I. O. tribunals and the decisions of the C. I. O. trial committees were received in evidence, not to establish the truth of the matter asserted therein for which they were incompetent hearsay, but for the limited purpose of establishing that proceedings were held and that decisions were rendered (R. III, 769–771, 778–779). On October 3, 1945, the C. I. O. tried the five stewards and the four committeemen *in absentia,* and on October 10, 1945, a decision of the trial committee was issued recommending their expulsion from the C. I. O. (R. I, 52–53; R. III, 856–866, 877–922). About mid-November 1945, the C. I. O. informed Labor Relations Director Wood of this action (R. 54; R. III, 741, 762). On December 17, 1945, the twenty-eight additional employees, with the exception of Edward Navarro, were tried by a C. I. O. tribunal (R. I, 52; R. III, 923–987). Some of these employees protested what they believed to be the irregularity of the proceeding, and forthwith withdrew from further participation in it (R. III, 924, 930–935). The remaining employees participated in the proceeding, and during its course entered a so-called "guilty" plea admitting that they engaged in the two and

a half days' work stoppage (R. II, 506–507, R. III, 969–976). On December 24, 1945, a decision of the trial committee was issued recommending that the employees who withdrew from the proceeding be expelled and that the employees who pleaded "guilty" be placed on probationary status (R. I, 53–54; R. III, 867–876). About January 1, 1946, the C. I. O. informed Labor Relations Director Wood of this action (R. I, 54; R. III, 742, 762).*

II

The Board's Conclusions of Law

The Board found the closed-shop agreement to have been validly entered into in conformity with the proviso to Section 8 (3) of the Act (R. I, 69). The Board concluded, however, that, by virtue of the indefinite term of the contract, which had run for more than four years, the em-

* Notwithstanding the unparticularized stress which the employer places on these trials (Emp. Br., pp. 13–14), it is clear that, since the trials occurred subsequent to the discharge of the employees, they have no relevance to the question of the employer's knowledge, at the time of the discharge, of the C. I. O.'s discriminatory purpose in requesting the discharge pursuant to the closed-shop agreement. The employer also stresses the "guilty" plea of some of the employees (Emp. Br., p. 14), but an examination of the trial transcript (R. III, 969–976) indicates that the employees did no more than admit that they engaged in the work stoppage, a fact which was never denied and which was true of most of the 313 employees. Their plea was in the nature of a demurrer to the complaint; they were not acting as penitents throwing themselves on the mercy of the tribunal.

ployees undertook to oust the C. I. O. as their bargaining representative at a period during which it was appropriate to seek a redetermination of representatives (R. I, 75, 54–55; R. III, 802, 799–805, R. III, 552). The Board further determined that "It is clear from the record, and we find, that the [employer] knew of the C. I. O.'s reason for demanding the discharges" (R. I, 76), namely, the employer "knew, when it discharged and refused to reinstate the complainants, that the C. I. O. demanded such action because of the complainants' exercise of the right guaranteed employees in the Act to bargain collectively through representatives 'of their own choosing'" (R. I, 76). The Board concluded that the employer "thereby violated Section 8 (1) and (3) of the Act, for the reasons stated in the *Rutland Court* case" (R. I, 76).

In *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587, 46 N. L. R. B. 1040, the Board determined that the proviso to Section 8 (3) of the Act does not authorize an employer to discharge employees pursuant to the closed-shop provisions of a contract when, to his knowledge, the discharge is requested by the union which is a party to the contract, for the purpose of eliminating employees who have sought to change bargaining representatives at a period when it is appropriate for the employees to seek a redetermination of representatives. Giving its reasons at length, the Board stated that:

The proviso relating to the closed shop is not a severable and separate portion of the Act. It must be construed in the light of the statutory statement of policy and the general provisions of the Act, and if any seeming conflicts arise they should be resolved so as to give proper effect to the salient provisions of the Act. * * * The express purpose of the Act is to insure employees of their own right of self-organization and a free choice of representatives. We cannot allow the declared intention of Congress to be evaded by permitting an employer and a union * * * to combine to preclude the employees from expressing their choice. The proviso to Section 8 (3) cannot therefore be considered as an instrument for depriving employees of their statutory right to select another representative for a period succeeding the term embraced by the closed-shop contract. We recognize the force of the arguments in favor of stability, but * * * the stability intended by the Act is not that involved in perennial suppression of the employee's will [46 N. L. R. B., at 1042].

* * * * *

* * * the mere fact that all closed shops are not unlawful, by virtue of the proviso, is no reason for holding that closed shops may be made perpetual because validly initiated pursuant to the proviso. Thus, for example, in the *Ansley Radio* case [18 N. L. R. B. 1028, 1061], the Board

confined its decision, that discharges made under a validly executed closed-shop contract did not constitute unfair labor practices, to cases where the agreement was "for a reasonable period of time" or "for a reasonable duration." In the instant case, a consideration of the facts will demonstrate that to sustain the contention of the [employer and the contracting union] would be to enforce a closed shop for an unreasonable period, indeed for an indefinitely long period or perhaps even in perpetuity [44 N. L. R. B., at 594–595].

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If these employees could lawfully be discharged, as the [employer and the contracting union] contend, because when their contract was about to expire such employees evinced a desire to have a different representative negotiate their next contract, then as each succeeding contract was about to expire the [employer and the contracting union] could renew the process of eliminating all employees who wished to change their representative for the forthcoming contract period. Thus, the [employer and the contracting union] are in substance contending that they may lawfully bar the employees in perpetuity from changing to a representative of their own free choice even if the [contracting union] is not the choice of a single employee affected at the threshold of each new contract period.

> This could not have been the intent of Congress. * * * Effectuation of the basic policies of the Act requires, as the life of the collective contract draws to a close, that the employees be able to advocate a change in their affiliation without fear of discharge by an employer for so doing [44 N. L. R. B., at 595–596].
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> * * * To insist that employees can never transfer their affiliation from one union to another, or to prevent employees toward the close of one contract period from changing their representatives for the purpose of negotiating and administering a new contract for the succeeding term is to impair rather than protect self-organization, to thwart rather than encourage collective bargaining by representatives of the employees' genuine choice, and accordingly to produce contracts which will not tend to stabilize mutually satisfactory labor relations or safeguard industrial peace. The stability intended by the Act is not that involved in a perennial suppression of the employees' will [44 N. L. R. B., at 597].

III

The Board's Order

The Board's order requires the employer to cease and desist from encouraging or discouraging membership in the A. F. of L., the C. I. O., or any other labor organization of its employees by discharging or refusing to reinstate any of

its employees, or by discriminating in any other manner in regard to their hire, tenure, or other terms of employment (R. I, 80). Affirmatively, the Board's order requires the employer to offer reinstatement with back pay to the thirty-seven employees, and to post an appropriate notice (R. I, 81–82).[10]

IV

The Proceedings in the Court Below

On December 30, 1946, the employer filed in the court below a petition to review and set aside the Board's order (R. I, 101–126). The Board in its answer requested enforcement of its order (R. I, 134–142). The C. I. O., A. F. L., and named individuals, whom the Board's order required the employer to reinstate with back pay, were permitted by order of the court below to intervene in the proceeding (R. I, 143–144). On January 13, 1949, the court handed down its opinion (R. IV, 990–992), and entered its decree enforcing the Board's order (R. IV, 993–996).

In pertinent part the decision below stated that (R. IV, 992):

> The Board found as ultimate facts (a) that the CIO sought to use the closed-shop contract for the purpose of punishing the

[10] That part of the Board's order (R. I, 83) which sets aside the election is not before the Court for review at the present time. *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453. Contrary to intimations in the employer's brief (pp. 27, 32, 35, 46, 57, 61), the Board's order does not set aside the closed-shop agreement.

insurgents, and (b) that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union had suspended the men in reprisal for their activities in favor of the rival union. The evidence abundantly supports these findings. As a matter of law, the Board determined that the closed-shop contract did not preclude the employees from engaging in these activities at the time they did so. Its decision rests upon the reasoning followed in *Matter of Rutland Court Owners,* 44 N. L. R. B. 587; 46 N. L. R. B. 1040. This view had our approval in *Local No. 2880* v. *National Labor Relations Board,* 158 F. 2d 365. The latter holding controls the present case.

In its earlier decision in the *Local 2880* case, the court below stated that (158 F. 2d, at 368, 369):

> The Board's construction of the proviso of subsection 8 (3) with relation to section 7 conferring on * * * all employees the right "to bargain collectively through representatives of their own choosing," as not warranting a discharge for activities at an election for such choice is so obviously rational that we well could be required to accept it under the rule that upon "questions of law, the experienced judgment of the Board is entitled to great weight." *Medo Corporation* v. *National Labor Relations Board* 321 U. S. 678, 681.
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> * * * we are of the opinion that it is the only interpretation to be given the proviso * * *
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* * * The Board's interpretation, in addition to confirming the democratic process in bargaining agency elections, prevents the use of the proviso for the perpetuation of a particular union's control of the employees once it enters into a closed shop contract with their employer.

SUMMARY OF ARGUMENT

The Board has construed and applied the proviso to Section 8 (3) of the National Labor Relations Act as not authorizing an employer to comply with the closed-shop provisions of a contract when, to his knowledge, discharges pursuant to the contract are sought by the contracting union as a penalty for rival union activity carried on during a period when it is lawful and appropriate for the employees to seek a redetermination of representatives. This view represents the most reasonable reconciliation between the general guarantees of the Act, which permit employees to choose and change representatives, and the limitations imposed by the proviso, which permit discipline of employees in the interest of union security and stability of the bargaining relationship.

This Court in *Wallace Corporation* v. *National Labor Relations Board,* 323 U. S. 248, 256, held that it did "not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of work-

ers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers." In the *Wallace* case the rival union activity of those in the minority group occurred prior to the execution of the closed-shop contract and resulted in the majority union thereafter denying them membership and securing their discharge under the closed-shop contract. In the instant case the rival union activity occurred four years after the execution of the closed-shop contract and resulted in the contracting union thereafter suspending those active in the rival union activity from membership in the contracting union and securing their discharge under the closed-shop contract. In both cases the employer at the time it made the requested discharges had knowledge that the requests therefor were based on rival union activities. We believe the principle of the *Wallace* case is as fully applicable in the one situation as in the other. Furthermore, the present statutory provisions of the Labor Management Relations Act, 1947, pertaining to union-security agreements, and the legislative history leading to them, show legislative approval of the *Wallace* case and the desirability of adherence to it.

The principle of the *Wallace* case is sound. The proviso to Section 8 (3) of the Act, which permits the *making* of a closed-shop agreement by a legitimate labor organization representing

the majority of employees in an appropriate unit, does not define the conditions under which it may be subsequently *performed*. This lack of definition of the legal incidents of a closed-shop agreement was deliberate, because the single purpose of the proviso was to prevent the total invalidation of closed-shop agreements, by virtue of the Act's ban on discrimination in employment practices because of union activity, without preventing accommodation of the closed-shop agreement to the public policy of the states. Since the performance of a closed-shop agreement is not in terms governed by the proviso, the effect to be given such an agreement when it touches on the exercise of the congressionally-protected right of choice of representatives must be drawn from the Act's basic guarantee of free choice. The fundamental postulate upon which the employees' right to self-organization and collective bargaining rests is the employees' freedom to choose and change bargaining representatives at regular intervals without constraint.

The Board's rejection of the absolute conception of a closed-shop agreement as permitting any discharge for any cause without question conforms to the traditional practice of states hospitable to the closed-shop agreement which, while permitting its making and performance generally, nevertheless do not allow it to be used arbitrarily for purposes insupportable by public policy. So too, preventing the interposition of the closed-

shop agreement to hamper free choice of representatives does not impair legitimate concern with secure and responsible trade unionism.

An employer's answerability for its wrongdoing in discriminating against employees by knowingly discharging them for rival union activity carried on at an appropriate period is not affected by the Board's lack of power to reach the contracting union's independent wrongdoing in requesting the discharges for such protected activity by employees. The employer's responsibility turns on its knowledge of the contracting union's discriminatory purpose. Such knowledge may be established by proving, as here, (1) actual knowledge of the contracting union's discriminatory purpose, or alternatively, (2) knowledge of facts which would apprise a reasonable man of the contracting union's discriminatory purpose, or further, but not involved in this case, (3) knowledge of facts sufficient to place a duty of inquiry upon the employer which if pursued would disclose the contracting union's discriminatory purpose.

Lastly, to prevent disruption of the exclusive representative's status during the early part or mid-term of its closed-shop agreement, the employees' rival union activity, to be protected, must occur at a time appropriate for redetermination of representatives. The period appropriate for advocacy of a rival union to displace the contracting union which has a closed-shop agreement

generally coincides with the period when the Board in a representation proceeding would consider a test of the majority status of any existing exclusive representative to be timely. In terms of the present case, the closed-shop agreement for an indefinite term between the C. I. O. and the employer, in existence for more than four years, no longer gave the C. I. O. immunity from challenge, because at that stage, under the Board's well-settled rules, the need of affording the employees an opportunity to oust or reaffirm their bargaining representative prevailed over the need for affording a period of quiet enjoyment to an agreement arrived at through collective bargaining.

ARGUMENT

THE PROVISO TO SECTION 8 (3) OF THE NATIONAL LABOR RELATIONS ACT DOES NOT GIVE AN EMPLOYER THE UNQUALIFIED RIGHT TO DISCHARGE EMPLOYEES AT THE DEMAND OF THE CONTRACTING UNION PURSUANT TO A CLOSED-SHOP AGREEMENT WHERE, TO THE EMPLOYER'S KNOWLEDGE, THE CONTRACTING UNION'S PURPOSE IS TO PUNISH EMPLOYEES FOR ENGAGING IN ACTIVITY ON BEHALF OF A RIVAL UNION, CARRIED ON DURING A PERIOD WHEN IT IS LAWFUL AND PROPER FOR THE EMPLOYEES TO SEEK A REDETERMINATION OF REPRESENTATIVES

A. *Preliminary statement*

The essential facts as found by the Board are: After a closed-shop agreement of indefinite duration had been in effect for more than four years, the employees engaged in advocacy of a rival union in order to replace the contracting union as the exclusive bargaining representative; to resist

the movement to oust it, the contracting union suspended thirty-seven employees from membership in the union, and requested their discharge, for the purpose of punishing them for engaging in rival union activity; and the employer, with knowledge of the contracting union's purpose, acceded to the request of the contracting union that the employees be discharged under the closed-shop agreement. On these findings, the Board held the discharges were effected in violation of Section 8 (1) and (3) of the National Labor Relations Act for which the proviso to Section 8 (3) afforded no exculpation. Section 8 (3) of the Act before the 1947 amendments[11] provided that:

> It shall be an unfair labor practice for an employer—
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> * * * * *
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> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a con-

[11] Inasmuch as Section 102 of the Labor Management Relations Act, 1947, precludes a retroactive application of its terms to make unlawful that which was, prior to its enactment, not an unfair labor practice, it is necessary to determine whether the conduct herein complained of was violative of the National Labor Relations Act prior to its amendment.

> dition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

The Board's interpretation of the statute is that the proviso to Section 8 (3) of the Act does not immunize an employer where, to his knowledge, enforcement of the closed-shop contract is being sought by the contracting union as a penalty for activity on behalf of a rival union, if such rival union activity was carried on during a period when it was lawful and proper for the employees to seek a redetermination of representatives.[12] The statutory right of employees to choose bargaining representatives embraces the right to seek a change of representatives at appropriate regular intervals. If employees could advocate change in representation only at the risk of imperiling their employment status under a closed shop contract, their statutory right would amount to little.

The Board's interpretation represents its considered judgment as to how the conflict between

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[12] Although this case embraces a conventional closed-shop agreement, the Board's view includes any form of union security agreement requiring membership in a labor organization as a condition of obtaining or retaining employment. For a judicial description of the varying forms which such agreements may take, see *Colonial Press, Inc.* v. *Ellis*, 321 Mass. 495, 499, 74 N. E. 2d 1, 3. See also, *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U. S. 525, 528, n. 2; Despres, *The Collective Agreement for the Union Shop*, 7 U. of Chi. L. Rev. 24, 25–26 (1939).

the general but basic guarantees of the Act (Sections 1 and 7), which permit employees to choose and change representatives, and the limitations imposed by the proviso to Section 8 (3), which permit discipline of employees in the interest of union security and stability of the bargaining relationship, may most reasonably be reconciled so that the legitimate scope of each may be preserved without nullifying the other.

B. *The Board's interpretation of the proviso to Section 8 (3) of the Act has been upheld in "Wallace Corporation* v. *National Labor Relations Board," 323 U. S. 248*

The Board's construction of the proviso to Section 8 (3) of the Act has been upheld by this Court in *Wallace Corporation* v. *National Labor Relations Board,* 323 U. S. 248, affirming 141 F. 2d 87 (C. A. 4), enforcing 50 N. L. R. B. 138, and by the Courts of Appeals for the Second, Third and Ninth Circuits[13] but rejected by the

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[13] *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14 (C. A. 2); *National Labor Relations Board* v. *American White Cross Laboratories, Inc.*, 160 F. 2d 75 (C. A. 2); *Colonie Fibre Company, Inc.* v. *National Labor Relations Board*, 163 F. 2d 65 (C. A. 2); *National Labor Relations Board* v. *Public Service Transport*, 24 L. R. R. M. 2466 (C. A. 3). The Board's construction has been approved by the court below in the present case and in its earlier decision in *Local No. 2880* v. *National Labor Relations Board*, 158 F. 2d 365, certiorari granted, 331 U. S. 798, certiorari dismissed on motion of petitioner, 332 U. S. 845. The latter case is noted in 56 Yale L. J. 1048 (1947); 15 U. of Chi. L. Rev. 232 (1947); and 33 Va. L. Rev. 521 (1947).

Seventh Circuit.[14] The Board has consistently applied this construction in a long line of decisions.[15] The pertinency of the decision in the *Wallace* case requires its consideration at some length.

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[14] *Lewis Meier & Co.* v. *National Labor Relations Board*, 21 L. R. R. M. 2093 (C. A. 7, November 3, 1947), "on the authority of *Aluminum Company of America* v. *National Labor Relations Board* (1946), 159 F. 2d 523 [C. A. 7]." See also, *Owens-Illinois Glass Company* v. *National Labor Relations Board*, 24 L. R. R. M. 2356 (C. C. A. 7). As to the position of the Courts of Appeals for the Sixth Circuit, *semble*, *National Labor Relations Board* v. *Eaton Mfg. Co.*, 175 F. 2d 292 (C. A. 6) (Query whether the court rejected the underlying findings of fact necessary to sustain the Board's view of the law as without adequate support in the evidence, or whether, assuming adequately supported findings of fact, it rejected the Board's conclusions on the law).

[15] *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587, 46 N. L. R. B. 1040; *Matter of Wallace Corp.*, 50 N. L. R. B. 138, enforced, 141 F. 2d 87 (C. A. 4), affirmed, 323 U. S. 248; *Matter of Mead Corp.*, 52 N. L. R. B. 1361; *Matter of Portland Lumber Mills*, 64 N. L. R. B. 159, enforced, 158 F. 2d 365 (C. A. 9); *Matter of Diamond T Motor Car Co.*, 64 N. L. R. B. 1225; *Matter of Cliffs Dow Chemical Co.*, 64 N. L. R. B. 1419; *Matter of Southwestern Portland Cement Co.*, 65 N. L. R. B. 1; *Matter of American White Cross Laboratories, Inc.*, 66 N. L. R. B. 866, enforced, 160 F. 2d 75 (C. A. 2); *Matter of Colonie Fibre Co., Inc.*, 69 N. L. R. B. 589, enforced, 163 F. 2d 65 (C. A. 2); *Matter of Eureka Vacuum Cleaner Co.*, 69 N. L. R. B. 878; *Matter of Spicer Mfg. Corp.*, 70 N. L. R. B. 41; *Matter of Rheem Mfg. Co.*, 70 N. L. R. B. 57; *Matter of Colgate-Palmolive-Peet Co.*, 70 N. L. R. B. 1202; *Matter of Lewis Meier & Company*, 73 N. L. R. B. 520, enforcement denied, 21 L. R. R. M. 2093 (C. A. 7, November 3, 1947); *Matter of Durasteel Co.*, 73 N. L. R. B. 941; *Matter of E. L. Bruce Company*, 73 N. L. R. B. 992; *Matter of Pillsbury Mills, Inc.*, 74 N. L. R. B. 1113; *Matter of Geraldine Novelty Co., Inc.*, 74 N. L. R. B. 1503, enforced, 173 F. 2d

In order to resolve a disputed question of employee representation between a C. I. O. affiliate and an independent union concerning which of the two was authorized to act as the exclusive bargaining representative, the C. I. O., the Independent, and the employer entered into an agreement providing for the conduct of an election by the Board and binding the employer to execute

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14 (C. A. 2); *Matter of E. L. Bruce Company*, 75 N. L. R. B. 522; *Matter of Basic Vegetable Products, Inc.*, 75 N. L. R. B. 815; *Matter of Gamble-Skogmo, Inc.*, 75 N. L. R. B. 1068; *Matter of Ellis Canning Co.*, 76 N. L. R. B. 99; *Matter of Eaton Mfg. Co.*, 76 N. L. R. B. 261, enforcement denied, 175 F. 2d 292 (C. A. 6); *Matter of Fajardo Development Co.*, 76 N. L. R. B. 956; *Matter of Public Service Corp.*, 77 N. L. R. B. 153, enforced, 24 L. R. R. M. 2466 (C. A. 3); *Matter of Detroit Gasket and Mfg. Co.*, 78 N. L. R. B. 670; *Matter of Stainslaus Food Products Co.*, 79 N. L. R. B. 260; *Matter of Selig Mfg. Co., Inc.*, 79 N. L. R. B. 1141; *Matter of National Electric Products Corp.*, 80 N. L. R. B., No. 151, 23 L. R. R. M. 1148; *Matter of Owens-Illinois Glass Co.*, 80 N. L. R. B., No. 141, 23 L. R. R. M. 1191, enforcement denied, 24 L. R. R. M. 2356 (C. A. 7); *Matter of Westinghouse Electric Corp.*, 80 N. L. R. B., No. 143, 23 L. R. R. M. 1181; *Matter of Revere Copper and Brass Co., Inc.*, 80 N. L. R. B., No. 220, 23 L. R. R. M. 1244; *Matter of Hamilton-Scheu & Walsh Co.*, 80 N. L. R. B., No. 234, 23 L. R. R. M. 1263; *Matter of General Instrument Corp.*, 82 N. L. R. B., No. 100, 23 L. R. R. M. 1633; *Matter of American Packing Corp.*, 82 N. L. R. B., No. 117, 23 L. R. R. M. 1640; *Matter of Interstate Engineering Corp.*, 83 N. L. R. B., No. 16, 24 L. R. R. M. 1031; *Matter of Horn Mfg. Co., Inc.*, 83 N. L. R. B., No. 168, 24 L. R. R. M. 1206; *Matter of United Engineering Co.*, 84 N. L. R. B., No. 10, 24 L. R. R. M. 1213. See also, *Matter of Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310; *Matter of Utica & Mohawk Cotton Mills, Inc.*, 51 N. L. R. B. 257, 259, n. 5; *Matter of Larus & Brother Company*, 62 N. L. R. B. 1075.

a closed-shop agreement with the successful union. The Independent won the ensuing election and it was certified by the Board as the exclusive representative. The Independent thereupon notified the employer that it wished to hasten execution of the closed-shop agreement in order to permit elimination of the C. I. O. adherents among the employees by excluding them from membership in the Independent, thereby forcing their discharge. Knowing the Independent's purpose, the employer entered into the closed-shop agreement and thereafter acceded to the Independent's request to discharge forty-three employees, all of whom had been members of the C. I. O. and thirty-one of whom had applied for membership in Independent and had been rejected. Finding that the employer "was put on notice that [Independent's] real purpose was to bar from future employment with the [employer] persons who had adhered to the [C. I. O.] in the election campaign" (50 N. L. R. B., at 154), the Board found the discharges to be unlawful, holding that "An employer may not enter into a closed-shop contract which to his knowledge is designed to operate as an instrument for effecting discrimination against his employees solely because of their prior union activities" (50 N. L. R. B., at 153). Affirming the Board's view, this Court stated (323 U. S., at 255–256):

> The duties of a bargaining agent selected under the terms of the Act extend beyond

the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation. No employee can be deprived of his employment because of his prior affiliation with any particular union. The Labor Relations Act was designed to wipe out such discrimination in industrial relations. Numerous decisions of this Court dealing with the Act have established beyond doubt that workers shall not be discriminatorily discharged because of their affiliation with a union. We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers. It was as much a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with Independent as it would have been had the company done it alone.

The force of this Court's conclusion is emphasized by the contention which it rejected (323 U. S., at 255):

> But the proviso in Section 8 (3) permits union shop agreements. It follows therefore, the company argues, that, inasmuch as such agreements contemplate discharge of those who are not members of the contracting union, and inasmuch as the company has no control over admission to union membership, the contract is valid and the company must discharge non-union members, regardless of the union's discriminatory purpose, and the company's knowledge of such purpose. This argument we cannot accept.

The instant case is, we believe, governed by the *Wallace* case. Here, as in that case, a minority of the employees in the appropriate unit were discharged because of their union activities. Here, as in that case, the employer in making the discharges was acting in compliance with the literal terms of a closed-shop contract theretofore executed with the union chosen by a majority of the employees in the unit. Here, as in that case, the Board held that the closed-shop contract did not justify the discharges because the employer knew at the time it made the discharges that the majority union invoked the agreement to eliminate those employees who advocated a rival union. In both cases the rival union activities revolved around a Board conducted election. In

the *Wallace* case the discharges occurred after the election. In this case nine of the discharges occurred during the four days before a petition for an election was filed, and the other twenty-eight discharges occurred during the ensuing two months when the proceedings before the Board preliminary to holding the election were taking place. The nine employees discharged prior to the filing of the election petition applied for and were denied reinstatement after the employer knew of the pendency of the Board proceedings for an election.

The only important factual difference between the *Wallace* situation and the present case is that in *Wallace* the closed-shop agreement was entered into by the employer with knowledge of its discriminatory purpose whereas here the agreement was proper at its inception but was thereafter utilized to the employer's knowledge for a discriminatory purpose. This factual difference is without legal significance. "In the one case the making of the contract, in the other case the performance of it, is against public policy."[16] In both cases the essence of illegality resides in the use of a closed-shop agreement as a device to discriminate against employees for advocacy of a rival union at a time appropriate

[16] *Omnia Co.* v. *United States*, 261 U. S. 502, 512, quoting with approval from *In re Shipton, Anderson & Co.*, [1915] 3 K. B. 676, 683–684. See also, Restatement, Contracts, Sec. 608; 6 Williston, Contracts (Rev. Ed.), Sec. 1759.

for choice.[17] In both cases the object was "to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers" (323 U. S., at 256).[18] Indeed, even this factual distinction may not be available, for in *Wallace* the closed-shop contract was entered into pursuant to the tri-

[17] The employer's attempt to distinguish between *Wallace* and this case on the ground that in *Wallace* the contracting union unreasonably denied membership" to the employees whereas here the employees had been admitted to membership but were thereafter suspended is without merit (Br., p. 65). There is no difference in principle between the refusal to *admit* an employee to membership in a union for a proscribed reason and the *suspension or expulsion* of an employee from membership in a union because of a proscribed reason. A closed-shop agreement contemplates that an employee *obtain and retain* union membership and there is no less reason to protect an employee from the consequences of his loss of membership than from his inability to acquire membership. Just as "discrimination in hiring is twin to discrimination in firing" (*Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 187–188), so here, discrimination in obtaining union membership is twin to discrimination in retaining union membership. Indeed, in this very case, both types of discrimination were involved (*supra*, p. 26 and n. 8).

[18] The interlocking nature of the two cases is shown by the administrative evolution of the Board's interpretation of the proviso. The Board's rule had its beginning with *Matter of Rutland Court Owners, Inc.*, 44 N. L. R. B. 587, in which enforcement of a closed-shop agreement valid at its inception was declared unlawful because of the discriminatory use to which it was put. Thereafter, the Board decided *Matter of Monsieur Henri Wines, Ltd.*, 44 N. L. R. B. 1310, in which a closed-shop agreement was held invalid at its inception

partite agreement which was at its inception without taint.[18a]

The *Wallace* case is not distinguishable on the grounds that Independent was a company-dominated labor organization. The tri-partite agreement entered into between the C. I. O., Independent, and the employer, providing for an election by consent and the execution of a closed-shop agreement with the victorious union, was in settlement of charges of company domination filed by the C. I .O. against the Independent. In conformity with the Board's policy of not going behind settlement agreements to take cognizance of unfair labor practices antedating the settlement in the absence of a subsequent unfair labor practice, the Board did not consider the domination

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because entered into with the purpose of depriving employees of their jobs who had by their union activity offended the employer. Subsequently, on rehearing of the *Rutland Court* case, the Board abided by its earlier decision, 46 N. L. R. B. 1040. These two cases coalesced in *Matter of Wallace Corporation*, 50 N. L. R. B. 138, affirmed by this Court, in which *Matter of Rutland Court Owners, Inc.*, holding the performance of a closed-shop agreement valid at its inception to be unlawful and *Matter of Monsieur Henri Wines, Ltd.*, holding the execution of a closed-shop agreement to be invalid at the outset, were both cited in support of the Board's interpretation, 50 N. L. R. B., at 153. When the *Wallace* case was reviewed by the Court of Appeals for the Fourth Circuit, both the *Rutland Court* and *Henri Wines* cases were cited by the Court in approving the Board's interpretation, 141 F. 2d, at 90. Thus, from the very outset, the making of the agreement as distinguished from its performance has not been regarded as a critical distinction.

[18a] See, Comment, 56 Yale L. J. 1048, 1051 (1947).

issue until it first ascertained whether the discharges under the closed-shop agreement, the only subsequent unfair labor practice involved (50 N. L. R. B., at 154), were in themselves unlawful. As explained by Professor Dodd, "Because of the Board's rule that charges of unfair labor practices antedating a settlement are revived if, but only if, there has been some subsequent unfair labor practice—a rule which is approved by the opinion of the Court—the crucial question in the case was whether the discharge of the excluded employees was an unfair labor practice within the meaning of the Act. That question could not be answered by characterizing Independent as company-dominated, since the only evidence justifying such characterization was evidence of pre-settlement facts which by hypothesis were not to be inquired into unless a post-settlement unfair labor practice had first been established." [19] Thus, as the Board explained, it was only after the Board "found that unfair labor practices were committed by the [employer] after as well as before the settlement agreements" that the Board went into "consideration of the events preceding the settlement agreements" (50 N. L. R. B., at 154, 152). In conformity with the rule that "the grounds upon which an administrative order must be judged are those upon which the record dis-

[19] Dodd, *Discrimination by Labor Unions in the Exercise of Statutory Bargaining Powers*, 58 Harv. L. Rev. 448, 452 (1945).

closes that its action was based,"[20] this Court was constrained to determine, as it did, that "the Board correctly found that there was a subsequent unfair labor practice" (323 U. S., at 255).[21] The dominated-character of Independent was therefore irrelevant to the determination of the legal incidents of the closed-shop agreement, and in dissent, Mr. Justice Jackson expressly alluded to the fact that the same result would follow had the C. I. O. been the contracting union (323 U. S., at 271–272). Nor can the *Wallace* case be explained away as an instance of collusion or conspiracy between the employer and Independent, for as the Court expressly noted, "Neither the Board nor the court below found that the company engaged in a conspiracy to bring about the discharge of former C. I. O. members" (323 U. S., at 252–253).

The clarity of this analysis is somewhat obscured by this Court's statement, in adverting to the employer's dismissal of its employees under the closed-shop agreement, "To permit it to do so by indirection, through the medium of a 'union' of its own creation, would be to sanction a readily

[20] *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80, 87; 332 U. S. 194, 196.

[21] In like fashion, the Court of Appeals for the Fourth Circuit, in reviewing the Board's order, also determined that "The Board, we think, was justified in finding that this was an unfair labor practice and upon such finding was justified in considering in connection therewith the unfair labor practices which had occurred prior to the agreement." (141 F. 2d, at 91.)

contrived mechanism for evasion of the Act" (323 U. S., at 256). However, we do not think this means that the *Wallace* case depended on the factor of company-domination. If company-domination were the decisive factor, the closed-shop agreement would be invalid by the very terms of the proviso itself which preclude "making an agreement with a labor organization * * * established, maintained, or assisted by any action defined in this Act as an unfair labor practice * * *," and any discussion beyond this short answer would have been unnecessary. That the *Wallace* case is not regarded by the Court as resting on so narrow a ground is indicated by the subsequent cases in which it is cited. *Wallace* and other cases, it was stated in *Hunt* v. *Crumboch,* 325 U. S. 821, 826, "stand for the principle that a bargaining agent owes a duty not to discriminate unfairly against any of the group it purports to represent." Citing *Wallace,* this Court in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.,* 335 U. S. 525, 532, 531, analyzed state laws prohibiting the closed-shop agreement in terms of the protection of "employment opportunities of members of *independent* unions," (emphasis supplied); and Mr. Justice Frankfurter, concurring in *American Federation of Labor* v. *American Sash & Door Company,* 335 U. S. 538, 546, cited *Wallace* as illustrating the effect given to "a legislative purpose to protect individual employees against the exclusionary

practices of unions." See also, *Elgin, Joliet & Eastern Railway Co.* v. *Burley*, 325 U. S. 711, 733, n. 30; *Trailmobile Co.* v. *Whirls*, 331 U. S. 40, 49, n. 16, 44, n. 8. The court below[22] and the Second Circuit,[23] in approving the Board's interpretation of the proviso, and the Seventh Circuit,[24] even after rejecting it, have not read the *Wallace* principle as applicable only to a company-dominated labor organization.[25]

C. *The Labor Management Relations Act, 1947, shows legislative endorsement of the "Wallace" and "Rutland Court" principles*

While the instant case arises under and is controlled by the National Labor Relations Act prior to its amendment, we believe it is relevant that the Labor Management Relations Act, 1947, by its provisions and by its legislative history shows Congressional endorsement of the *Wallace* and *Rutland Court* principles. Indeed, Section 8 (a) (3) (C) of the final version of the Senate bill specifically provided that: "* * * no employer shall justify any discrimination against an employee for nonmembership in a labor organiza-

[22] *Local 2880* v. *National Labor Relations Board*, 158 F. 2d 365, 368–369.

[23] *National Labor Relations Board* v. *American White Cross Laboratories*, 160 F. 2d 75, 77; *National Labor Relations Board* v. *Geraldine Novelty Co., Inc.*, 173 F. 2d 14, 17.

[24] *Owens-Illinois Glass Company* v. *National Labor Relations Board*, 24 L. R. R. M. 2356.

[25] But see, *National Labor Relations Board* v. *Eaton Mfg. Co.*, 175 F. 2d 292 (C. A. 6).

tion * * * (C) if he has reasonable grounds for believing that membership was denied or terminated because of activity designed to secure a determination pursuant to section 9 (c) (1) (A), at a time when a question concerning representation may appropriately be raised" (H. R. 3020, 80th Cong., 1st Sess., reprinted in *Legislative History of the Labor Management Relations Act, 1947* (Gov't. Print. Office, 1948), p. 238.) During the hearings preceding its enactment, the *Wallace* and *Rutland Court* cases were mentioned with entire approval. The only criticism was that there were additional situations of wrongful discharges under closed-shop agreements for which employers should be liable and that the union which brought about the discharges should also be responsible therefor.[26] Section 8 (a) (3) (A) and (B) as finally adopted authorized an employer to discharge employees under a union security agreement only (1) for failure to acquire membership open to employees upon nondiscriminatory terms and (2) for nonpayment of union dues and initiation fees. This made it unnecessary to retain the Senate bill's specific codification of the Board's interpretation of the proviso to Section 8 (3) of the Act.[27]

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[26] S. Rep. No. 105, 80th Cong., 1st Sess., pp. 21–22; 93 Cong. Rec. 1825.

[27] Although it is irrelevant to the instant case, to complete the legislative picture, it is to be noted that Section 8 (b) (2) of the amended Act provides that it is an unfair labor practice for labor organizations "to cause or attempt to cause an

D. *Neither the language of the proviso to Section 8 (3) of the original National Labor Relations Act nor its legislative history authorizes the use of a closed-shop agreement for the purpose of eliminating efforts to secure a change in bargaining representatives*

Even if *Wallace* were not controlling, examination anew of the interpretation to be accorded the proviso to Section 8 (3) of the original National Labor Relations Act affirms the soundness of the Board's construction. That construction, reading the proviso "not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will,"[35] is consonant with the Congressional purpose.

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employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership," and Section 10 (c) provides that "where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him." See, *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 18 (C. A. 2); *Matter of Newman*, 85 N. L. R. B., No. 132, 24 L. R. R. M. 1463, 1466–1467.

[35] *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84, 93–94.

The employer here assumes that the proviso to Section 8 (3) legitimatizes not only the making of closed-shop agreements but all discharges made pursuant to their terms, irrespective of the circumstances or the consequences attending the discharges. However, even read literally, the proviso merely legitimatizes the making of the agreement under the National Labor Relations Act and in no way defines the area of its operation in the limitless combination of circumstances to which it is potentially applicable. It reads:

> That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

It is plain that the *making* of the agreement is hedged with the requirements that the labor organization be free of employer assistance or control and that it represent a majority of the employees in an appropriate unit. In the absence of compliance with these safeguards, the closed-shop agreement is invalid at its inception. In this way the agreement at the outset is oriented with the main body of the Act by endowing only an unencumbered labor organization freely chosen

by a majority of the employees with capacity to enter into such an agreement.[29] It is hardly possible that the *making* of the closed-shop agreement should be so carefully integrated into the scheme of the Act, but that its *performance* thereafter should be utterly uninhibited by any concern for preserving the opportunity for freedom of choice which is the Act's basic postulate.

The absence of specific definition in the proviso of the circumstances under which a closed-shop agreement might properly be performed is consistent with its limited purpose. The object of Congress in inserting the proviso to Section 8 (3) was only to prevent the general prohibition upon employer discrimination in hire or tenure of employment for union activity from being construed as an absolute ban of the closed-shop. It was designed to avoid the misconception, which had arisen under Section 7 (a) of the National Industrial Recovery Act,[30] that the right guaranteed to employees to organize and bargain collectively without constraint required without more total invalidation of closed-shop agreements.[31] But this single purpose aside, the proviso neither enhanced nor diminished the legal attributes

[29] *National Labor Relations Board* v. *Electric Vacuum Cleaner Company*, 315 U. S. 685, 693–695.

[30] 48 Stat. 195, 198–199.

[31] See, Comment, *Effect of Section 7 (a) of NIRA on the Validity of a Closed Union-Shop Contract*, 44 Yale L. J. 1067 (1935).

which a closed-shop agreement would otherwise possess. It left the evolution of the closed-shop agreement and the moulding of its legal incidents to determination by state or other federal law. *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board,* 336 U. S. 301. The Senate Report on the bill which became the Act states (S. Rep. No. 573, 74th Cong., 1st Sess., 11–12):

> * * * The reason for the insertion of the proviso is as follows: According to some interpretations, the provision of section 7 (a) of the National Industrial Recovery Act, assuring the freedom of employees "to organize and bargain collectively through representatives of their own choosing," was deemed to illegalize the closed shop. * * *
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> * * * to prevent similar misconceptions of this bill, the proviso in question states that nothing in this bill, or in any other law of the United States, or in any code or agreement approved or prescribed thereunder, shall be held to prevent the making of closed-shop agreements between employers and employees. In other words, the bill does nothing to facilitate closed-shop agreements or to make them legal in any State where they may be illegal; it does not interfere with the *status quo* on this debatable subject but leaves the way open to such agreements as might now be legally consummated * * *.

The House Report is equally emphatic (H. Rep. No. 1147, 74th Cong., 1st Sess., 19–20):

> The proviso to the third unfair labor practice, * * * does not give new legal sanctions to the closed shop. All that it does is to eliminate the doubts and misconstructions in regard to the effect of section 7 (a) upon closed-shop agreements, and the possible repetition of such doubts and misconstructions under this bill, * * *. The bill does nothing to legalize the closed-shop agreement in the States where it may be illegal; but the committee is confident that it would not be the desire of Congress to enact a general ban upon closed-shop agreements in the States where they are legal. * * *

In his major speech to the Senate in support of the bill, Senator Wagner stated (79 Cong. Rec. 7570):

> * * * The much-discussed closed-shop proviso merely states that nothing in any Federal law shall be held to illegalize the confirmation of voluntary closed-shop agreements between employers and workers. This interpretation is necessary to prevent repetition of those mistaken interpretations which have held that Congress intended to outlaw the closed shop when it enacted section 7 (a) of the Recovery Act.
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> I hold no brief for or against the closed shop, but there are some who believe that it is a device which at times may be neces-

sary to advance and preserve the living standards of employees. It is legal in many States, and there is no reason why Congress should make it illegal in those places where public policy now sustains it.

The same explanation of the proviso was made on the floor of the House (79 Cong. Rec. 9717).

Thus, the proviso to Section 8 (3) of the Act at most "merely disclaims a national policy hostile to the closed shop or other forms of union-security agreement." *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 307. It does not proclaim a policy exalting the closed-shop agreement to a level antagonistic to the foundation of the Act itself.[22]

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[22] The *Algoma* case, the employer contends (Br., p. 48), holds that a closed-shop agreement valid under local law is valid under the National Labor Relations Act, and that under California law the closed-shop agreement in this case was permitted. The *Algoma* case holds that a closed-shop agreement permitted by the federal act may be prohibited by local law; it does not hold that a closed-shop agreement forbidden by the federal act may be permitted by the local law. Plainly local law inconsistent with the federally protected right of choice of representatives must yield to the federal law. *Hill* v. *Florida*, 325 U. S. 538; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; see also, *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 123; *Hamilton* v. *National Labor Relations Board*, 160 F. 2d 465, 571 (C. A. 6), certiorari denied *sub. nom. Kalamazoo Stationery Co.* v. *National Labor Relations Board*, 160 F. 2d 465, 571 (C. A. 6), certiorari agreement in the instant circumstances (*infra*, pp. 13–14, 15, n. 48).

E. *The general purpose and structure of the Act require that the proviso be construed so as to permit employees freedom periodically to change bargaining representatives*

Since the performance of a closed-shop contract is not in terms governed by the proviso, the effect to be given such an agreement when it touches on the exercise of the congressionally protected right of choice of representatives must be drawn from the general purpose and structure of the Act.

Section 7 of the Act guarantees that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

The rights so granted are implemented by proscribing certain unfair practices: infringement by employers of the rights guaranteed by Section 7; employer domination of labor organizations; employer alteration of employment terms to encourage or discourage employee activity on behalf of a labor organization; employer discrimination against an employee because he has filed charges or given testimony under the Act; and employer refusal to bargain collectively with the representative chosen by a majority of the employees in an appropriate unit (Section 8 of

the Act). Of these banned practices, "a discriminatory discharge of an employee because of his union affiliations goes to the very heart of the Act."[33]

This pattern of protection is essential in maintaining the integrity of employee freedom of choice upon which collective bargaining rests. When a majority of the employees within an appropriate unit have freely designated a representative, it becomes the employer's duty "to bargain collectively with the chosen representative of his employees. The obligation being exclusive, * * * it exacts 'the negative duty to treat with no other'."[34] The existence of a statutory representative of the employees not only precludes the employer from bargaining with any other labor organization, but during the effective period of the representative's authority, it prevents negotiation "with individual employees, whether a majority or a minority, with respect to wages, hours, and working conditions. * * *"[35] By this means, as Mr. Justice Frankfurter observed in his concurring opinion in *American*

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[33] *National Labor Relations Board* v. *Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C. A. 4).

[34] *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 683–684.

[35] *Ibid.* See also, *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 384–385; *National Labor Relations Board v. Crompton-Highland Mills, Inc.*, 337 U. S. 217; *J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332.

Federation of Labor v. *American Sash & Door Company*, 335 U. S. 538, 552–553, the Act insures:

> against that undercutting of union standards which was one of the most serious effects of a dissident minority in a union shop. Under interpretations of the National Labor Relations Act undisturbed by the Taft-Hartley Act, and of the Railway Labor Act, the bargaining representative designated by a majority of employees has exclusive power to deal with the employer on matters of wages and working conditions. Individual contracts, whether on more or less favorable terms than those obtained by the union, are barred. * * * Under these laws, a non-union bidder for a job in a union shop cannot, if he would, undercut the union standards.

While majority rule is the only practical means of translating individual freedom of choice into unified action and thereby giving it realistic effect,[*] majority rule does not imply indifference to minority interests. The essence of fair and workable majority rule is the responsibility of the representative to all elements of its constituency. Alert to the need for protecting the minority from possible abuse by the majority, Congress through the reports of its committees made clear that any benefits attained by the exclusive representative during its incumbency

[*] S. Rep. No. 573, 74th Cong., 1st Sess., 13; H. Rep. No. 1147, 74th Cong., 1st Sess., 20, 21.

through collective bargaining are to be given on "equally advantageous terms to nonmembers of the labor organization negotiating the agreement." "Since the agreement made will apply to all, the minority group and individual workers are given all the advantages of united action. * * * agreements more favorable to the majority than to the minority are impossible." [37] Furthermore, the Senate Committee noted the incapacity of the exclusive representative to act in a manner inconsistent with "genuine collective bargaining" (S. Rep. No. 573, 74th Cong., 1st Sess., 13–14):

> Another protection for minorities is that the right of a majority group through its representatives to bargain for all is confined by the bill to cases where the majority is actually organized "for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." An organization which is not constructed to practice genuine collective bargaining cannot be the representative of all employees under this bill.

In terms equally applicable to an exclusive representative under the National Labor Relations Act, in speaking of an exclusive representative which derived its status from the Railway Labor

[37] H. Rep. No. 1147, 74th Cong., 1st Sess., 20–21; see also, S. Rep. No. 573, 74th Cong., 1st Sess., 13. See, *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, 202, n. 3.

Act,[38] this Court defined the duty of fair dealing which a representative owes to each of the divergent elements which make up its constituency (*Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, 198–204):

> * * * the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights.
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> * * * * *
>
> The labor organization chosen to be the representative of the craft or class of employees is * * * chosen to represent all of its members, regardless of their union affiliation or want of them.
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> * * * * * *
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> * * * While the majority of the craft chooses the bargaining representative, when chosen it represents, as the Act by its terms makes plain, the craft or class, and not the majority. The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent all its members, the majority as well as the minority, and it is to act for and not against those whom it represents. * * *
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[38] 44 Stat. 577, 45 U. S. C. 151, *et seq.*

> While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith.

In accordance with its duty of fair representation, a labor organization entrusted with exclusive authority to bargain for all employees does not thereby become empowered by the Act to perpetuate itself by entering into contractual arrangements designed to insulate itself from opposition. Democratic procedure requires that a representative periodically submit itself to its constituency for approval or rejection. A representative empowered to preclude, forestall, or frustrate an untrammelled contest of its rights to continue as representative by disenfranchising those members of its constituency who oppose it cuts to the heart of freedom of choice on which majority rule rests for its sanction.

The Act was passed in contemplation of rival unionism, for contrary to the employer's contention (Emp. Br., pp. 19, 56–57), the division in the American labor movement between the American Federation of Labor and the Congress of Industrial Organizations wh. occurred after the adoption of the Act did n. introduce, but only accentuated, the problems arising from labor or-

ganizations in competition. Rival unionism has been a concomitant of trade union activity since the inception of workers' organizations,[39] and with the advent of governmental processes for the determination of bargaining representatives, observers very early noted the need for tempering an absolute conception of the closed-shop agreement with effectuation of the statutory policy of securing an untrammelled employee resolution of inter-union disputes.[40] This Court in *American Federation of Labor* v. *National Labor Relations Board,* 308 U. S. 401, 411, n. 4, rejected the view that inter-union disputes were not contemplated when the Act was passed: *"Congress apparently recognized that representation proceedings under § 9 (c) might involve rival unions.* The House Committee said: 'Section 9 (c) makes provision for elections to be conducted by the Board or its agents or agencies to ascertain the representatives of employees. *The question will ordinarily arise*

[39] See the illustrative authorities collected in Note, *The Influence of the National Labor Relations Board Upon Inter-Union Conflicts*, 38 Col. L. Rev. 1243 (1938). See also, *Plant* v. *Woods*, 176 Mass. 492, 57 N. E. 1011; *National Protective Association* v. *Cumming*, 170 N. Y. 315, 63 N. E. 369.

[40] Witmer, *Collective Labor Agreements in the Courts*, 48 Yale L. J. 195, 221 (1938); Despres, *The Collective Agreement For the Union Shop*, 7 U. of Chi. L. Rev. 24, 44–50, 32–33, 43–44 (1939); Comment, *Effect of Section 7 (a) of NIRA on the Validity of A Closed Union-Shop Contract*, 44 Yale L. J. 1067, 1072 (1935). See also, Willcox, *The Triboro Case—Mountain or Molehill?*, 56 Harv. L. Rev. 576, 585–587, 592–596 (1943).

as between two or more bona fide organizations competing to represent the employees, but the authority granted here is broad enough to take in the not infrequent case where only one such organized group is pressing for recognition, and its claim of representation is challenged.' H. Rep. No. 1147, Committee on Labor, 74th Cong., 1st Sess., p. 22." [Emphasis supplied.] [41] As was stated by Senator Walsh on the floor of the Senate in explaining the attributes of majority rule and the effect of a choice of a majority representative (79 Cong. Rec. 7673):

> That does not mean that the minority cannot protest by their vote. That does not mean that the minority cannot criticize. That does not mean that the minority cannot see fit to make a change at the next election.

To construe the proviso as sanctioning the conversion of a closed-shop agreement into an instrument for suppressing the employees' democratic aspirations for orderly change is to stultify the

[41] See also the explanation of Senator Walsh on the floor of the Senate (79 Cong. Rec. 7659–7660): "When a dispute arises between an employer and a group or groups of employees as to which organization is the legal one, the company union, the A. B. C. union, the fellowship union, or the trade union, the board takes jurisdiction, and thus is determined who and what kind of a labor organization represents the employees. The board will arrange for an election and provide for secret ballot. It will then find out what organization represents the majority of the employees and who are to be the representatives."

opportunity for choice which would otherwise exist among contesting unions simply because one of them possesses a closed-shop agreement.

The opportunity to choose and periodically to change representatives without constraint is the essential scheme which the Act envisages as indispensable to industrial democracy. It provides the frame of reference for determining the effect to be given the closed-shop agreement in this case. The agreement here provided that "The Union is hereby recognized as the sole collective bargaining representative for all employees covered by this agreement" (R. III, 787). The closed-shop provision of the agreement is the product of negotiation on union security which, subject to governmental regulation of its terms, is a mandatory subject of collective bargaining between employers and exclusive representatives because embraced within the area of "conditions of employment" (Section 9 (a) of the Act).[42] The agreement was here used to suppress the very freedom of choice guaranteed employees under the Act by causing the discharge of employees who sought at an appropriate time and by orderly means to displace the incumbent by another union

[42] *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 360; *National Labor Relations Board* v. *Andrew Jergens Company*, 175 F. 2d 130 (C. A. 9), certiorari denied, October 10, 1948, No. 225, this Term; *National Labor Relations Board* v. *Winona Textile Mills, Inc.*, 160 F. 2d 201, 208–209 (C. A. 8); *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. 2d 874, 883 (C. A. 1), certiorari denied, 313 U. S. 595.

more to their liking. A closed-shop agreement put to such a use reduces an employee's freedom of choice to a freedom to advocate a change at the risk of losing his job. It enables the incumbent representative to retain its status, not by the continuing voluntary support of an unfettered majority, but by compelling conformity to it through its power to control the retention of jobs. It forces employees who desire a change to campaign, if at all, only in secret and fear, and, as the facts in this case demonstrate (*supra*, pp. 10–14),[43] to resist depletion of their leadership and support only by recourse "to strike, with the attendant interruption of commerce, which the Act seeks to avoid."[44] It impedes industrial peace, because a collective bargaining agreement negotiated and administered by a union which retains its support by stifling its opposition "probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining."[45]

The Act is not so self-defeating that it countenances the conversion of a closed-shop contract

[43] See also, for strikes resulting from discharges for rival union advocacy, *Matter of National Electric Products Corp.*, 80 N. L. R. B., No. 151, 23 L. R. R. M. 1148; *Matter of Horn Mfg. Co., Inc.*, 83 N. L. R. B., No. 168, 24 L. R. R. M. 1206, 1207.

[44] *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, 200.

[45] H. Rep. No. 1147, 74th Cong., 1st Sess., 20.

into an instrument antithetical to the Act's basic guarantee of freedom of choice. Indeed, to construe the Act as authorizing the discharge of employees for advocacy of a change at an appropriate time raises the question whether there is an unconstitutional invasion of the rights of the persons so discharged, an interpretation which settled canons of construction require be avoided. For if there is a constitutional duty to exercise a power of representation derived from the government without arbitrary discrimination as between persons represented, it may be argued that a majority union may not lawfully exercise congressionally granted powers so as to combine the closed shop with invidious denial of good standing to employees who oppose it, with resultant loss of employment to them, in order to perpetuate a status which rests on congressional grant.[46]

F. *States hospitable to the closed-shop agreement do not permit its blanket performance under all circumstances; it is unlikely, therefore, that such absolutism was contemplated by Congress*

Because the evolution of the legal incidents of a closed-shop agreement has been largely left to determination by state law (see pp. 58–61,

[46] *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, 198–199, and concurring opinion of Mr. Justice Murphy at 208–209; *Betts* v. *Easley*, 161 Kan. 459, 169 P. 2d 831; Dodd, *Discrimination by Labor Unions in the Exercise of Statutory Bargaining Powers*, 58 Harv. L. Rev. 448, 453–454 (1945).

supra), it is relevant to inquire as an aid to interpretation whether jurisdictions ordinarily hospitable to the closed-shop agreement have accorded to it the absolute sanctity which the employer imputes to it. If states hospitable to the closed-shop agreement do not permit its enforcement where performance is deemed detrimental to the commonweal, it would be unlikely that Congress should have intended such an absolutism to inhere in the closed-shop agreement for purposes of the Federal Act.

In California the closed-shop agreement has received generous judicial treatment. *Park & Tilford Import Corporation* v. *International Brotherhood, Local No. 848,* 27 Cal. 2d 599, 165 P. 2d 891. Nevertheless, the California courts hold that a closed-shop agreement may not be utilized to cause the termination of a worker's employment for non-membership in a labor union where membership in the union is not open to him upon reasonable terms. *James* v. *Marinship Corp.,* 25 Cal. 2d 721, 155 P. 2d 329; *Bautista* v. *Jones,* 25 Cal. 2d 746, 155 P. 2d 343; *Dotson* v. *International Alliance,* 246 R. R. M. 2601 (Cal. Sup. Ct., September 30, 1949); *Thompson* v. *Moore Drydock Co.,* 27 Cal. 2d 595, 165 P. 2d 901; *Williams* v. *International Brotherhood of Boilermakers,* 27 Cal. 2d 586, 165 P. 2d 903. As explained in the *Williams* case (27 Cal. 2d, at 591, 165 P. 2d, at 906): "The individual worker denied the right to keep his job suf-

fers a loss, and his right to protection against arbitrary and discriminatory exclusion from union membership should be recognized whenever membership is a necessary prerequisite to work."

In 1937, New York adopted a State Labor Relations Act,[47] following the federal pattern, which by the proviso to Section 704 (5) thereof, in substantially the same terms as the proviso to Section 8 (3) of the national Act, provided "that nothing in this article shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein, if such labor organization is the [designated majority] representative of employees. * * *" Eschewing reliance upon this proviso as the basis for decision, the New York Court of Appeals in *Williams* v. *Quill* affirmed the propriety of the closed-shop agreement, at the same time stating certain limitations upon its enforceability (277 N. Y. 1, 7, 12 N. E. 2d 547, 549):

> * * * a labor organization is permitted to combine and to strike in a particular industry for the purpose of obtaining employment for its own people, even to the extent of excluding others from the entire industry who are not union men. *The one reservation in this law is that the attempt to accomplish the end shall be carried out in good faith and for the declared purposes, and not through malice or ill-will or a*

[47] Laws of New York, 1937, Chap. 443, 30 McKinney's Consolidated Laws of New York, Labor Law, §§ 700–716.

> *desire to injure non-union employees or simply and solely for the purpose of keeping them out of work.* [Emphasis supplied.]

In a subsequent case the New York Court of Appeals held that a closed-shop agreement could not validly be used to limit employment to sons of members. In an action by workers to prevent their loss of employment the court directed the union either to admit the non-filial workers to membership or to cease giving effect to the closed-shop agreement by which it was sought to exclude them from employment. *Clark* v. *Curtis,* 297 N. Y. 1014, 80 N. E. 2d 536, affirming 273 App. Div. 797, 76 N. Y. S. 2d 3, reversing 71 N. Y. S. 2d 55. The New York State Labor Relations Board, the agency entrusted with the administration of the New York Labor Relations Act, when confronted with the same abuse of the closed-shop agreement that is presented in this case, ruled that (*Matter of Club Transportation Corp.,* 10 N. Y. S. L. R. B. 485, 509):[48]

> The expiration date of the * * * contract was June 30, 1945. As of May 3d, therefore, it had only some eight weeks to

[48] See, New York State Labor Relations Board, Eleventh Annual Report, 1948, pp. 70–72. Illustrating the cross-pollinating nature of state and federal adjudication, the New York Board in this case and the California Supreme Court in the *Williams* case, *supra*, p. 73 (27 Cal. 2d, at 592, 165 Pac. 2d, at 906) both found support for their conclusions in the National Board's decision in *Matter of Rutland Court Owners, Inc.,* 44 N. L. R. B. 587, and related cases, the soundness of which are now in issue.

run. Deducting the thirty days grace period allowed by that contract, less than a month remained before its expiration. *It is well settled that a contract requiring membership in a union may not be used to stifle a desire for change of bargaining representatives, and therefore may not be used as justification for discharge as the expiration date of the contract approaches.* [Emphasis supplied.]

The decision of the New York Board was affirmed in *New York Labor Relations Board* v. *Club Transportation Corp.*, 24 L. R. R. M. 2274 (N. Y., App. Div., June, 1949).

In comparable fashion, Pennsylvania,[49] New Jersey,[50] Maryland,[51] Ohio,[52] and Oregon[53] have also granted relief against loss of gainful employment where refusal of membership in the labor organization results from reasons deemed contrary to state policy. Thus, the public policy of states denies effect to a closed-shop agreement where exclusion from membership is grounded on

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[49] *Dorrington* v. *Manning*, 135 Pa. Super. 194, 4 A. 2d 886; *Schwartz* v. *Laundry & Linen Supply Drivers' Union*, 339 Pa. 353, 14 A. 2d 438.

[50] *Wilson* v. *Newspaper & Mail Deliveries' Union*, 123 N. J. Eq. 347, 197 A. 720; *Carroll* v. *Local No. 269*, 133 N. J. Eq. 144, 31 A. 2d 223.

[51] *Lucke* v. *Clothing Cutters and Trimmers' Assembly*, 77 Md. 396, 26 A. 505.

[52] *Wills* v. *Local 106, Hotel & Rest. Employees*, 26 Ohio N. P. (N. S.) 435.

[53] *Schwab* v. *Moving Pict. Mach. Operators*, 165 Ore. 602, 109 P. 2d 600.

race discrimination;[54] on nepotism;[55] on appropriate rival union activity;[56] on refusal to permit self-employed persons to ply their trade coupled with denial of union membership to them;[57] on closing of membership books because present members are unemployed;[58] on confinement of employment opportunities in the industry to present members without affording an opportunity for membership to others who desire and are qualified to join;[59] and on no disclosed reason at all.[60]

Ascertainable state law rejects the notion, therefore, that the closed-shop agreement may be used

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[54] *James* v. *Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329; *Williams* v. *International Brotherhood of Boilermakers*, 27 Cal. 2d 586, 165 P. 2d 903; *Thompson* v. *Moore Drydock Co.*, 27 Cal. 2d 595, 165 P. 2d 901; *Wills* v. *Local 106, Hotel & Rest. Employees*, 26 Ohio N. P. (N. S.) 435. See also, *Betts* v. *Easley*, 161 Kan. 459, 169 P. 2d 831.

[55] *Clark* v. *Curtis*, 297 N. Y. 1014, 80 N. E. 2d 536, affirming 273 App. Div. 797, 76 N. Y. S. 2d 3, reversing 71 N. Y. S. 2d 55.

[56] *Matter of Club Transportation Corp.*, 10 N. Y. S. L. R. B. 485, 509, affirmed, *New York Labor Relations Board* v. *Club Transportation Corp.*, 24 L. R. R. M. 2274 (N. Y., App. Div., June, 1949).

[57] *Bautista* v. *Jones*, 25 Cal. 2d 746, 155 P. 2d 343; see also, *Schwartz* v. *Laundry & Linen Supply Drivers' Union*, 339 Pa. 353, 361–362, 14 A. 2d 438, 442.

[58] *Wilson* v. *Newspaper & Mail Deliverers' Union*, 123 N. J. Eq. 347, 197 A. 720; *Lucke* v. *Clothing Cutters & Trimmers Assembly*, 77 Md. 396, 26 A. 505.

[59] *Schwab* v. *Moving Pict. Mach. Operators*, 165 Ore. 602, 109 P. 2d 600. See also, *Carroll* v. *Local No. 269*, 133 N. J. Eq. 144, 31 A. 2d 223; *Shinsky* v. *O'Neil*, 232 Mass. 99, 104, 121 N. E. 790, 792.

[60] *Dorrington* v. *Manning*, 135 Pa. Super. 194, 4 A. 2d 886.

to control employment without regard to the arbitrary nature of its enforcement in the particular circumstances to which it is applied. Since the enforceability of a closed-shop agreement is generally subject to adjustment in conformity with public policy, it would be inconsonant to infer that Congress by the proviso to Section 8 (3) of the Act meant to accord to the closed-shop agreement absolute sanction disabling its accommodation to the basic purposes of the Act. Lack of absolutism in the enforcement of closed-shop agreements for state purposes implies a comparable area of flexibility for federal purposes.

G. *The Board's interpretation of the proviso to Section 8 (3) preserves the integrity of the Act without impairing the essence of the closed-shop agreement*

Evaluated in terms of the social advantages attributed to the closed-shop agreement, the Board's interpretation of the proviso to Section 8 (3) of the Act preserves the integrity of the Act without impairing the essence of the closed-shop agreement. The major reasons advanced by responsible union leaders for seeking a closed-shop may be characterized as (1) security and share the cost, (2) responsibility, and (3) sentimental or social. In terms of security, by requiring all employees to be union members, it prevents attrition of the union's adherents, thereby maintaining and enhancing its bargaining power

through the strength which comes from unity; in terms of share the cost, it requires all those who obtain the benefits of union standards to share the financial burdens incurred in their acquisition and maintenance; in terms of resposibility, by subjecting all the employees to common union discipline, it enables the union to enjoin adherence to its rules and to the obligations of the collective bargaining agreement, thereby preventing their irresponsible infringement with resultant disadvantage to both management and labor; and, in terms of the sentimental or social reason, union men usually prefer to work with those sympathetic to their views and resent the presence of nonunion men who are potentially dangerous to their cause.[61]

1. *Security and share the cost:* The Board's interpretation of the proviso preserves to a union for the term of its contract, so long as it continues to be the exclusive representative, the security which inures to the union through maintenance of unanimous membership among the employees in the unit for which it bargains. Employees who advocate a change to a rival union

[61] This generalized statement is derived from: *The Closed Shop and Union Security*, Economic Brief of the American Federation of Labor, submitted in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Company*, 335 U. S. 525, and from the materials collected in Appendix B. pp. 86–116, of the Board's brief in *Wallace Corporation* v. *National Labor Relations Board*, Nos. 66, 67, October Term, 1944.

are nonetheless required to remain members in the contracting union for the life of the current contract.[62] They are likewise required to continue to pay their membership dues and other financial obligations to the contracting union.[63] And if the contracting union, after an unfettered contest, retains its status as the exclusive bargaining representative, any ensuing compulsory membership agreement it negotiates may properly require rival union adherents to obtain membership in the contracting union as a condition of employment so long as exclusion from the union is not premised on the antecedent rival union activity.[64] Furthermore, as fully explained hereafter (*infra*, pp. 102–110), the Board confines the protected time during which rival union advocacy may be undertaken to a reasonable period before the expiration of the closed-shop agreement, thus justifying a request for the discharge of employees who seek to displace the contracting union during the early life or mid-term of the contract.[65]

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[62] *Matter of Rutland Court Owners, Inc.*, 46 N. L. R. B. 1040, 1041–1042; *Matter of Mead Corporation*, 52 N. L. R. B. 1361, 1361–1362 and n. 1, 1368 and n. 7; *Matter of Utica & Mohawk Cotton Mills, Inc.*, 51 N. L. R. B. 257, 259 and n. 5. This very case shows that membership must be maintained at all times. An employee was held properly discharged, notwithstanding her advocacy of the A. F. L., because she had refused to obtain membership in the C. I. O. (R. I, 74, 21, R. II, 647–653).

[63] *Ibid.*

[64] *Matter of Ellis Canning Company*, 76 N. L. R. B. 99, 113–114.

[65] It may be noted that the Act itself even in the absence of a closed-shop agreement affords a significant measure of

2. *Responsibility:* Rival union adherents are not only required to maintain their membership in the contracting union during the life of the closed-shop agreement, they are by the same token also required to conform to the union's valid rules of conduct and to respect the standards imposed by the collective bargaining agreement. For example, the contracting union may require each member to "conform to, and abide by the rules concerning wages and hours, and working rules, as agreed upon by the Local;" it may require "each member to attend one meeting a month, vote in all elections and read the official publication of the local;" it may forbid any member from leaving "the meeting while in session, except by permission;" it may exclude from the meeting any "member under the influence of liquor;" it may insist that no "member shall maliciously, and without cause, bring charges against another

union security to a majority representative. Protection of the union standards from undermining is secured under the Act by investing exclusive status to deal with the employer in the majority representative and preventing employer encroachment on the right to organize and bargain collectively (*supra*, pp. 62–64). The Act itself therefore provides the protection against inroads on the union's security which until its passage was one of the main functions of the closed-shop agreement, and the enhanced protection which a closed-shop agreement still affords is not under the Act's standards indispensable to the union's capacity to function effectively. If it were, the Act would not have subjected the acquisition of a closed-shop agreement both to the exigencies of negotiation with the employer and to independent state regulation of its legal incidents (*supra*, pp. 57–61).

member;" and in like fashion, it may require adherence to the host of other proper rules deemed necessary to the promotion of the union's interests.[66] The contracting union may validly enjoin compliance with such rules by disciplinary action, and to that end invoke the closed-shop agreement to obtain the removal from employment of those members who have lost their good standing. The power of the union to maintain the employees' responsibility is accordingly in no way diminished.

It is necessary, however, carefully to distinguish between the failure of employees to *conform* to valid rules of conduct required by the contracting union and the action taken by employees to displace the contracting union. The taking of action by employees to displace the contracting union may not, under the guise of failure to conform to the contracting union's rules, be made the subject of disciplinary measures.[67] "A labor organization

[66] The illustrations are taken from the constitution and by-laws of the contracting union involved in this case received in evidence as Intervenor's Exhibit No. 5. They may be found *seriatim* at p. 18, Art. IX, Sec. 2; p. 19, Art. IX, Sec. 6; p. 29, Sec. 2; p. 30, Secs. 5 and 8.

[67] The Board will not inquire into the reasons which impel employees to leave one union and join another. "* * * the function of this Board under Section 9 (c) of the Act is to ascertain the desires of employees with respect to their collective bargaining representative, not to pass judgment upon the reasonableness or wisdom of such desires. The Board has never inquired into the motives of employees who secede from one union and join another. Their reasons may be foolish or unjust, but such factors are not within the con-

cannot, by means of its membership rules, restrict the freedom of employees to designate a new collective bargaining representative * * * " *Matter of E. L. Bruce Company*, 75 N. L. R. B. 522, 525.

3. *Sentimental or Social:* The desire of employees not to work with nonunion men as a sentimental or social matter is perhaps the least substantial social advantage attributed to the closed-shop agreement, and it could not justify creation of an enforceable right of adherents of one *bona fide* union to exclude the adherents of another *bona fide* union from gainful employment. The group in control has no higher ethical claim to its preferences than the group out of control, and if the in-group could insist upon its preferences to the exclusion of others, the out-group when it attains control could with equal propriety insist upon its exclusiveness, resulting in an endless cycle of recrimination. Moreover, to assume that a labor organization as a voluntary associa-

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templation of a statute which makes the sole test of a bona fide bargaining agent's status depend upon whether or not a majority of the employees wish it to represent them." *Matter of Trailer Company*, 51 N. L. R. B. 1106, 1110–1111. Where, however, the labor organization designated by a majority of employees is incapable by virtue of its structure or policy of according impartial representation to any employee or group because of race, creed, color, or national origin, the Board will decline to certify it, or will rescind its earlier certification, as the exclusive representative. *Matter of Larus & Brother Company*, 62 N. L. R. B. 1075; *Matter of Atlanta Oak Flooring Company*, 62 N. L. R. B. 973; *Matter of Carter Mfg. Co.*, 59 N. L. R. B. 804; *Matter of Bethlehem-Alameda Shipyard, Inc.*, 53 N. L. R. B. 999, 1016.

tion may deny membership on the basis of unqualified preference is to ignore the fact that in contemporary life "a union occupies a quasi public position similar to that of a public service business and it has certain corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal associations. Its asserted right to choose its own members does not merely relate to social relations; it affects the fundamental right to work for a living." *James* v. *Marinship Corp.*, 25 Cal. 2d 721, 731, 155 P. 2d 329, 335.[68]

In sum, the Board's interpretation of the proviso to Section 8 (3) of the Act, in preserving

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[68] See also, *Washington Local Lodge No. 104* v. *International Brotherhood of Boilermakers*, 203 Pac. 2d 1019, 1045, 23 L. R. R. M. 2578, 2597 (Wash. Sup. Ct., February 21, 1949): "* * * the International Brotherhood has for some years had closed shop agreements * * * [by which] the employers agreed to employ members of the Brotherhood exclusively, and all such employees were required to be hired through the office of the local union. In short, a boilermaker had to join the union in order to work at his trade and support himself and his family. There was no other way for him to secure or retain a job. Did he join the union voluntarily, in the same sense that a man voluntarily joined a theosophical society, church, charitable organization, or an organization to promote temperance or a mutual insurance society? We think not. He was compelled to join in order to make a living."

As stated in *Carroll* v. *Local No. 269*, 133 N. J. Eq. 144, 148, 31 A. 2d 223, 225: "If the characterization of a labor union as a voluntary association becomes in time a mere anachronism, the mere word 'voluntary' will not likely preserve the present state of the law." See also Summers, *The Right to Join a Union*, 47 Col. L. Rev. 33 (1947).

the integrity of the Act from impairment, does not detract from "the traditional method of a closed-shop agreement."[69]

H. *The Board's lack of power to reach the contracting union's discriminatory conduct in requesting the discharge does not detract from its power to reach the employer's independent wrongdoing in knowingly complying with the discriminatory request*

To escape responsibility for its knowing accession to the contracting union's discriminatory purpose, the employer argues that the Act does not prevent "coercion of employees by employees or labor organizations," which in essence is said to be the consequence of enforcement of the closed-shop agreement in the present case (Emp. Br., pp. 35, 36, 48–56). The fact that the Board, prior to the amendments to the Act made in 1947, was unable affirmatively to reach the independent wrongdoing of a labor organization through the avenue of an unfair labor practice proceeding does not prove that a labor organization was incapable of wrongdoing within the contemplation of the Act. The *Wallace* case itself undercuts this assumption, for it, together with *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192, place upon a labor organization acting as exclusive representative the duty of fairly representing all component groups of employees

[69] S. Rep. No. 573, 74th Cong., 1st Sess., 13.

within the unit without hostile discrimination among them, an obligation flowing from the Act inconsistent with the conception that a labor organization may with all propriety "coerce" employees.[10] Presaging the Second Circuit's later approval of the Board's interpretation of the proviso, the fallacy underlying the argument was lucidly exposed by Judge Learned Hand in *National Labor Relations Board* v. *Dadourian Export Corporation*, 138 F. 2d 891, 892, 893 (C. A. 2):

> * * * It is quite true that only an employer can be guilty of "unfair labor practices," (§ 8), but § 7 confers the right on all employees freely to choose their bargaining representatives, and the invasion of that right is as much a wrong when committed by a union organizer as by an employer. The fact that when it is not committed by an employer, the Board has no power to use its peculiar remedies to effectuate the policies of the act, must not blind us to the fact that those policies include employees' freedom from interference with their choice of representatives from any source whatever.
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> * * * the overriding consideration must always be the employees' untram-

[10] See also, *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69, 74 (C. A. 5); *Gauweiler* v. *Elastic Stop Nut Corp.*, 162 F. 2d 448, 451 (C. A. 3).

melled freedom of choice; upon that the whole framework rests.

In the words of Chief Justice Stone,[71] "The right conferred on employees to bargain collectively through a representative of their own choosing is the foundation of the National Labor Relations Act. Without that right * * * the Act as drawn would have little scope for operation. The fact that the National Labor Relations Act imposes sanctions on the employer alone does not mean that it did not, by § 7, confer the right on employees as against others as well as the employer to make an uninhibited choice of their bargaining agents. * * * Section 7 confers the right of choice generally on employees and not merely as against the employer."

Of course, union conduct designed to restrict free employee choice is a wrong. But the controlling factor here is the employer's answerability for its own misconduct in discriminating against employees. That responsibility is not minimized or extinguished because of lack of power to reach the contracting union's independent wrongdoing.[72] "The Labor Relations Act con-

[71] Concurring in *Hill* v. *Florida*, 325 U. S. 538, 545.

[72] Compare the situation in which an employer engages in an unfair labor practice when it fails affirmatively to take reasonable steps to prevent one group of employees, whether union or nonunion, from being ejected from the plant and ousted from their jobs by violence or other disorderly pres-

templates submission of disputes as to labor practices of employers to reasoned and impartial determination after full and fair hearing. If by that procedure there is found wrong-doing on both sides, the Board can act to prevent the employer wrong-doing prohibited by the Act, even though it can not reach other wrong-doing." *National Labor Relations Board* v. *Indiana & Michigan Electric Company*, 318 U. S. 9, 29.

The ancillary argument which the employer makes to escape responsibility rests on the following syllogism: the same policy of employee freedom of choice underlies both the Norris-LaGuardia Act[75] and the National Labor Relations Act, and the C. I. O.'s conduct in this case is antagonistic to the policy of both; the Norris-LaGuardia Act creates no right in the employees to be free of the C. I. O.'s coercion enforceable in a private suit for injunctive relief; hence, the National Labor Relations Act, which is based on

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sure at the hands of another group of employees, whether union or nonunion. *National Labor Relations Board* v. *Hudson Motor Car Co.*, 128 F. 2d 528, 532–533 (C. A. 6); *National Labor Relations Board* v. *General Motors Corp.*, 116 F. 2d 306, 309–310, 311 (C. A. 7); *National Labor Relations Board* v. *Weissman*, 170 F. 2d 952 (C. A. 6), certiorari denied, 336 U. S. 972; *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. 2d 331 (C. A. 6); *Matter of Detroit Gasket & Mfg. Co.*, 78 N. L. R. B. 670, 671–672. In none of these cases does the Board have power to reach the wrong of the aggressor group of employees.

[75] 47 Stat. 70, 29 U. S. C. 101.

the same policy as the Norris-LaGuardia Act, creates no right in the employees to be free of the C. I. O.'s coercion, and from the employer's coercion based on the C. I. O.'s acts, enforceable in an unfair labor practice proceeding before the Board (Br., pp. 39–45).

Even if a federal district court were without jurisdiction to restrain the C. I. O.'s conduct because of the Norris-LaGuardia Act, a matter which may be open to question,[14] that lack of power is without pertinence in determining the Board's competence to reach the employer. The reason which would disable the federal courts from granting relief, namely, the withdrawal of the federal courts from intervention in labor disputes, has no significance in demarking the Board's power to act. For, although both the

[14] The right of the employees to be free of the C. I. O.'s coercion would not be inferred from the Norris-LaGuardia Act, as was the situation in *Lauf* v. *E. G. Shinner & Co.*, 303 U. S. 323, but from the National Labor Relations Act. Since for the enforcement of this right, which would be drawn from the National Labor Relations Act, there is no available administrative remedy directly against the union before the Board the usual judicial remedies of injunction and money awards would be appropriate to the enforcement of the right (*Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192, 204–208; *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323, U. S. 210; see also, *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 563), unless Congress intended to make the right unjusticiable (cf. *U. E. R. and M. W.* v. *I. B. E. W.*, 115 F. 2d 488, 490–492 (C. A. 2)).

Norris-LaGuardia Act and the National Labor Relations Act serve the same statutory policy, the means adopted to that end are opposed; under the former the keynote is judicial abnegation, under the latter it is affirmative governmental action.

Congress carried over into Section 2 (9) of the National Labor Relations Act, both before and after its amendment, the same definition of a labor dispute which is embodied in the Norris-LaGuardia Act; and Section 2 (3) of the National Labor Relations Act defined the term "employee" to "include any employee" without limitation "to the employees of a particular employer" and to "include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. * * *" Unlike the Norris-LaGuardia Act, however, the objective of these familiarly broad definitions under the National Labor Relations Act[75] was not to exclude, but to guarantee unfettered governmental action within the orbit delineated by the National Labor Relations Act. Unlike the Norris-LaGuardia Act, which left the resolution of "economic conflict" to the play of "economic forces and the pressure of public opinion",[76] under the National

[75] *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. 2d 134 (C. A. 4), certiorari denied, 302 U. S. 731.

[76] *United States* v. *Hutcheson*, 312 U. S. 219, 231.

Labor Relations Act, Congress was by its own rule circumscribing the area of industrial combat by interdicting conduct described as unfair labor practices.

Therefore, while the concept of a labor dispute is equally as broad under the National Labor Relations Act as under the Norris-LaGuardia Act, its latitude under the former is designed to assure affirmative governmental action while under the latter it is designed to restrict it."[77] This distinction in purpose was recognized under the Railway Labor Act, the enforcement of which is based on direct equity suits by private parties,[78] to which the Norris-LaGuardia Act was held inapplicable because the Railway Labor Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."[79] Even

[77] See *Matter of American News Co., Inc.*, 55 N. L. R. B. 1302, 1313.

[78] As to the distinction between the enforcement machinery of the Railway Labor Act and the National Labor Relations Act, compare *Texas & N. O. R. Co.* v. *Brotherhood of Ry. and S. Clerks*, 281 U. S. 548, and *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, with *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261; *Fur Workers Union, Local No. 72* v. *Fur Workers Union, No. 21238*, 105 F. 2d 1, 8–17 (C. A. D. C.); and *U. E. R. & M. W.* v. *I. B. E. W.*, 115 F. 2d 488 (C. A. 2). See also, *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, and *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323.

[79] *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 563.

more compellingly, in order to preserve the integrity of the governmental machinery devised to protect them, the enforcement of the rights secured under the National Labor Relations Act, centralized in the Board to the exclusion of any other tribunal, bars private recourse independently of the Board for injunctive relief against the wrongs denounced as unfair labor practices.[80] Thus, with respect to the matters committed to the Board's determination, the federal courts are without jurisdiction, not merely because the controversy involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, but because it pertains to a subject entrusted to the Board's administration.

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[80] Cases before the amendment of the National Labor Relations Act: *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261; *U. E. R. & M. W.* v. *I. B. E. W.*, 115 F. 2d 488 (C. A. 2); *Fur Worker's Union, Local No. 72* v. *Fur Workers's Union, No. 21238*, 105 F. 2d 1, 8–17 (C. A. D. C.) affirmed, 308 U. S. 522; *International Brotherhood* v. *International Union*, 106 F. 2d 871 (C. A. 9); *United Brick & Clay Workers of America* v. *Junction City Clay Company*, 158 F. 2d 552 (C. A. 6); *Blankenship* v. *Kurfman*, 96 F. 2d 450 (C. A. 7).

Cases after the amendment of the National Labor Relations Act: *Amazon Cotton Mills Co.* and *National Labor Relations Board* v. *Textile Workers Union*, 167 F. 2d 183 (C. A. 4); *Amalgamated Association* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 (C. A. 8); *I. L. U.* v. *Sunset Line & Twine Co.*, 77 F. Supp. 119 (N. D. Cal.); *Gerry* v. *Superior Court*, 194 Pac. 2d 689, 22 L. R. R. M. 2279 (Cal. Sup. Ct., June 16, 1948); *In re De Silva*, 199 P. 2d 6, 23 L. R. R. M. 2085 (Cal. Sup. Ct., November 16, 1948).

I. *In order to hold the employer responsible for a wrongful discharge under a closed-shop agreement, the employer must be shown to have knowledge of the contracting union's discriminatory purpose; and in order for the employees' rival union activity to be protected, it must occur during a period appropriate for the redetermination of representatives.*

It is clear that the proviso to Section 8 (3) of the Act does not afford an employer blanket justification for discharges of employees made at the behest of a contracting union pursuant to a valid closed-shop agreement. In preserving to employees an opportunity to engage in rival union activity the Board has, however, been careful to establish limitations on the protection available to employees and the duty laid upon employers. In the first place, the employer must be shown to have knowledge that the contracting union deprived the employees of good standing and demanded their discharge for activity on behalf of a rival union. And in the second place, the rival union activity, to be protected, must occur during a period when it is appropriate for the employees to seek a redetermination of representatives. The implication of each of these requisites may appropriately be explored in relation to the present case.

Absence of employer knowledge of the contracting union's discriminatory purpose frees the

employer of responsibility for acceding to the discriminatory request.[81] In this case, the Board found that the employer "*knew* of the C. I. O.'s reasons for demanding the discharges," namely, "that the C. I. O. demanded such action because of the complainant's exercise of the right guaranteed employees in the Act to bargain collectively through representatives 'of their own choosing' " (R. I, 76).[82] The court below, stating that "the Board found as ultimate facts (a) that the CIO sought to use the closed-shop contract for the purpose of punishing the insurgents, and (b)

[81] It is significant, we believe, that the discharges in this case occurred in July, August, and September 1945, long after this Court had decided the *Wallace* case on December 18, 1944; and, as previously indicated, *supra*, p. 21, the employer's labor relations director "fell back on legal advice" before making the discharges.

[82] Requisite knowledge has been deemed lacking as an appropriate basis for employer liability in *Matter of Diamond T. Motor Co.*, 64 N. L. R. B. 1225; *Matter of Spicer Mfg. Corp.*, 70 N. L. R. B. 41; *Matter of Basic Vegetable Products, Inc.*, 75 N. L. R. B. 815, 817, 828–831; *Matter of Stanislaus Food Products Co.*, 79 N. L. R. B. 260.

The employer states that the Board's rule is anomalous because the protection of the employees turns on the employer's knowledge of the discrimination, yet whether or not the employer knows of the discrimination, the employees have been wronged (Br., pp. 29–30). Plainly the only conscionable basis upon which the employer's responsibility can rest is the employer's knowing accession to the discriminatory act. Because some employees may be wronged without redress where the employer lacks knowledge, it does not follow that all of the employees should be wronged without redress even where the employer does know. The anomaly is in the employer's position, not the Board's.

that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union has suspended the men in reprisal for their activities in favor of the rival union," concluded that "the evidence abundantly supports these findings" (R. IV, 992). Actual knowledge of the contracting union's discriminatory purpose is therefore the basis of the employer's responsibility in the present case.

Upon the basis of evidence adduced at the hearing, the Board found, despite the employer's denial, that it knew of the C. I. O.'s discriminatory purpose. In so finding, the Board acts in the same capacity as does a jury when the jury returns a special verdict that the holder of a negotiable instrument knew, at the time he received the instrument, despite his denial, that there was an infirmity in it.[83] "Notice is a fact, the existence of which is to be established by evidence in the same manner as the existence of any other fact is established; and actual notice embraces all degrees and grades of evidence, from the most direct and positive proof to the slightest circumstances from which a jury would be warranted in inferring notice."[84] The denial of actual knowledge, like the denial

[83] See 4 Williston, Contracts, § 1157 (Rev. Ed. 1936).

[84] *In re Leterman, Becher & Co., Inc.*, 260 Fed. 543, 547 (C. A. 2), certiorari denied, *sub nom. Coleman & Co.* v. *Tawas Co.*, 250 U. S. 668. Substantial evidence is that quantum of proof which is "enough to justify, if the trial were to a jury, a refusal to direct a verdict when the con-

of any operative fact, simply renders its proof difficult "because in the teeth of a denial the proof of motive must depend upon acts and circumstances which can never be conclusive and when motive is attributed to an artificial person it involves probing the intent of all the officers concerned."[85] Where, as here, knowledge is a prerequisite for charging a person with liability for conduct, the Board's refusal to credit the denial of knowledge, because of circumstances which make the truth of the disclaimer improbable, represents an unimpeachable exercise of a traditional function of any trier of fact in making "inquiries into the subjective." *Commissioner of Internal Revenue* v. *Culbertson,* 337 U. S. 733, 743.

In addition to actual knowledge, as an alternative ground for decision, in answer to the employer's contention that it "could not 'necessarily have deduced' the C. I. O.'s true purpose," the Board concluded that the employer "made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C. I. O.'s failure to deny the obvious facts, to believe that the C. I. O. was not acting in reprisal against the

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clusion sought to be drawn from it is one of fact for the jury." *National Labor Relations Board* v. *Columbian Enameling and Stamping Co.*, 306 U. S. 292, 300.

[85] *National Labor Relations Board* v. *Pacific Greyhound Line, Inc.*, 91 F. 2d 458, 459 (C. A. 9), modified on other grounds, 303 U. S. 272.

complainants because of their anti-C. I. O. activity" (R. I, 79). The Board holds that the employer may not disregard the plain import of facts of which it is apprised and simulate a degree of credulity in the conduct of ordinary affairs to which experienced businessmen are not customarily addicted. It is familiar law that a person "has no right to shut his eyes or his ears to the inlet of information," and then claims in good faith that he is "without notice." [86]

In order to prevent disingenuous disavowal of actual knowledge, the Board places responsibility on the employer when the latter is in possession of facts affording a "reasonable basis for belief" [87] as to the contracting union's discriminatory purpose. The correctness of the Board's conclusion, in holding the employer responsible when it has knowledge of facts which would apprise a reasonable man of the contracting union's discriminatory purpose, is confirmed by Section 8 (a) (3) (B) of the Act, as amended. It provides that under a union-shop contract "no employer shall

[86] *Simmons Creek Coal Company* v. *Doran*, 142 U. S. 417, 437, quoting from Virginia Court of Appeals in *Burwell's Admr's* v. *Fauber*, 21 Gratt. 446, 463.

[87] *Matter of Westinghouse Electric Corp.*, 80 N. L. R. B., No. 143, 23 L. R. R. M. 1181, 1182 ("knew, or at least had a reasonable basis for belief"); *Matter of Owens-Illinois Glass Co.*, 80 N. L. R. B., No. 141, 23 L. R. R. M. 1191, 1192–1193 ("knows or has reason to believe"); *Matter of Basic Vegetable Products, Inc.*, 75 N. L. R. B. 815, 817 ("knowledge or good reason to believe").

justify any discrimination against an employee for nonmembership in a labor organization * * * *if he has reasonable grounds for believing* that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." [Emphasis supplied.] In like fashion, the final version of the Senate bill which had codified the Board's interpretation of the proviso (*supra*, pp. 54–55) had provided that: "* * * no employer shall justify any discrimination against an employee for nonmembership in a labor organization * * * (C) *if he has reasonable grounds for believing* that membership was denied or terminated because of activity designed to secure a determination pursuant to section 9 (c) (1) (A), at a time when a question concerning representation may appropriately be raised." [Emphasis supplied.]

A third basis of employer responsibility is the employer's knowledge of facts sufficient to place a duty of inquiry upon it which if pursued would disclose the contracting union's discriminatory purpose.[88] Although this basis of

[88] *Matter of Lewis Meier & Company*, 73 N. L. R. B. 520, 521–522; *Matter of Pillsbury Mills, Inc.*, 74 N. L. R. B. 1113, 1116; *Matter of Durasteel Company*, 73 N. L. R. B. 941, 945; *Matter of Interstate Engineering Corporation*, 83 N. L. R. B., No. 16, 24 L. R. R. M. 1031, 1032–1033; *Matter of United Engineering Company*, 84 N. L. R. B., No. 10, 24 L. R. R. M. 1213.

employer knowledge is in no way involved in this case, its explanation is necessary because of the employer's contention that it shows the unreasonableness of the duty required of the employer (Br., pp. 30–31, 15).

An employer is not required before complying with a discharge demand under a closed-shop agreement to pursue any inquiry unless at the time of the request it is already in possession of information which demonstrates the likelihood that the agreement is being invoked for discriminatory purposes.[*] Where such information is in possession, inquiry is to be made, as it is made in other fields, in accordance with "well-settled law that a party to a transaction, where his rights are liable to be injuriously affected by notice, cannot willfully shut his eyes to the means of knowledge which he knows are at hand, and thereby escape the consequences which would flow from the notice if it had actually been received; or in other words, the general rule is that knowledge of such facts and circumstances as are sufficient to put a party upon inquiry, and to show that if he had exercised due diligence he would have ascertained the truth of the case, is equivalent to actual notice of the matter in

[*] Facts and circumstances sufficient to require inquiry were deemed lacking in *Matter of Diamond T Motor Car Company*, 64 N. L. R. B. 1225, 1226, and in *Matter of Spicer Mfg. Corp.*, 70 N. L. R. B. 41, 42.

respect to which the inquiry ought to have been made." [99]

In order to guard against the improvident commission of an unfair labor practice through compliance with a union's discharge request under a closed-shop contract, where the facts demonstrate discrimination, the employer is required to pursue an inquiry in a narrow, confined sphere. Thus, where the employer is in possession of information which demonstrates to it that the contracting union is invoking the closed-shop agreement for discriminatory purposes, and where nonpayment of dues is also offered in justification for the discharge request, the employer may ask the employees whether they have in fact offered to pay their dues. *Matter of Lewis Meier & Company,* 73 N. L. R. B. 520, 521–522. So, too, where discriminatory purpose is manifest, but where the employee's inability to work harmoniously with his fellow-workers is also suggested as the reason for the discharge request, the employer may inquire among the employees of the supposedly disgruntled crew as to the basis for the purported antagonism. *Matter of Pillsbury Mills, Inc.,* 74 N. L. R. B. 1113, 1116. By its nature, however, the area of inquiry is not susceptible to predetermination, its direction being necessarily dependent on the facts and circumstances giving rise to inquiry. But in no

[99] *The Lulu,* 10 Wall. 192, 201–202.

event does the limited scope of inquiry open to the employer contemplate that it be vested with investigatory powers, that it delve into the union's books and policies, or that it police the union's conduct of its internal affairs.[91]

The choice is not between no inquiry and unlimited inquiry. The problem, rather, is one of defining a qualified inquiry in terms of an adjustment to be made between the conflicting interests of employee freedom to change representatives, employer freedom from onerous burdens, and union privacy. The course of inquiry may tangentially lead the employer into acts from which it would otherwise be barred by Section 8 (1) of the Act, as infringement upon self-organizational rights of employees, were it not for the justification afforded by the objective of the inquiry. The

[91] The narrow sphere of inquiry contemplated is comparable to that envisaged under the final version of the Senate bill embodying the amendments to the Act which had provided that "no employer shall justify any discrimination against an employee for nonmembership in a labor organization * * * (C) if he has reasonable grounds for believing that membership was denied or terminated because of activity designed to secure a determination pursuant to section 9 (c) (1) (A), at a time when a question concerning representation may appropriately be raised" (*supra*, pp. 54–55, 98). In referring to this provision, the Senate Report on the bill which became the Act, as amended, stated, "The tests provided by the amendment are based upon facts readily ascertainable and do not require the employer to inquire into the internal affairs of the union." S. Rep. No. 105, 80th Cong., 1st Sess., p. 20.

Board has weighed the competing values and determined that the good resulting from protecting freedom to change representatives outweighs the harm of intrusion into union privacy. As this Court stated in *National Labor Relations Board* v. *Stowe Spinning Company,* 336 U. S. 226, 231, "the Wagner Act 'left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms.' *Republic Aviation Corp.* v. *Labor Board,* * * * 324 U. S., at 798. Sections 8 (1) and 8 (2)," and now Sections 8 (1) and 8 (3), "of the Act would seem to run into each other in the situation before us, were we to forget that the Board is the agency which weighs the relevance of factual data."

Apart from the question of the employer's knowledge of the contracting union's discriminatory purpose, the Board's rule requires that the employees' rival union activity, in order to be protected, must occur at a period during which it is appropriate to seek a redetermination of representatives. "In the interest of effectuating the policies of the Act by encouraging collective bargaining and stabilizing labor relations," the object of this limitation is to prevent undermining "the status of the existing bargaining representative in the middle of the contract term," without depriving employees of "an opportunity at an appro-

priate time to exercise their right to 'change their collective bargaining representative for the next contractual period' and to 'affiliate with and campaign for any union for the next period.'"[92] Stated otherwise, "Protection will not be given dual union activity where its purpose is to upset the existing contract status of the union."[93]

The period appropriate for advocacy of a rival union to displace the closed-shop contracting union normally coincides with the period when the Board in a representation proceeding would consider a test of the majority status of any existing exclusive representative to be timely.[94] Contrary to intimations in the employer's brief (pp. 24, 48, 49–50), the rule pertaining to the ascertainment of the period appropriate for the redetermination of representatives was not evolved as an incident of the effect to be given a closed-shop agreement when it conflicts with the em-

[92] *Matter of Southwestern Portland Cement Company*, 65 N. L. R. B. 1, 8.

[93] *Matter of Durasteel Company*, 73 N. L. R. B. 941, 944; See also *National Labor Relations Board* v. *Public Service Transport*, 24 L. R. R. M. 2466, 2471 (C. A. 3). Protection has been denied for this reason in *Matter of Southwestern Portland Cement Company*, 65 N. L. R. B. 1; *Matter of Revere Copper and Brass, Inc.*, 80 N. L. R. B., No. 220, 23 L. R. R. M. 1244; *Matter of General Instrument Corp.*, 82 N. L. R. B., No. 100, 23 L. R. R. M. 1633.

[94] *Matter of Geraldine Novelty Company, Inc.*, 74 N. L. R. B. 1503, 1504, enforced, 173 F. 2d 14, 16–18 (C. A. 2); *Matter of Westinghouse Electric Corp.*, 80 N. L. R. B., No. 143, sl. op. pp. 17–19, 23 L. R. R. M. 1181.

ployees' right to change representatives, but it was developed as part of the larger problem of ascertaining to what extent any collective-bargaining agreement, whether closed shop or not, should preclude a redetermination of representatives. The rule was adopted and applied from the very beginning of the Board's administration of its election machinery for resolving representation contests without regard to whether or not a closed-shop agreement was involved. National Labor Relations Board, Third Annual Report (Govt. Print. Off., 1939), pp. 134–136, and cases cited; National Labor Relations Board, Fourth Annual Report (Govt. Print. Off., 1940), p. 75, and cases cited; *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 16–17 (C. A. 2). The rule, developed as part of the Board's representation machinery, antedated the *Ansley Radio* case (*supra*, pp. 30–31) in which, in an unfair labor practice proceeding, the Board's decision mentioned the pertinence of the rule to the question of the lawfulness of discharging employees for advocating a change of representatives during the term of a closed-shop agreement. "This administrative rule should logically be applied in complaint cases no less than in representation cases". *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 18 (C. A. 2).

The meaning and measurement of the appropriate period may best be illustrated in relation to its determination in the present case. The

Board found the closed-shop agreement to have been validly entered into in conformity with the proviso to Section 8 (3) of the Act (R. I, 69). The Board concluded, however, that, by virtue of the indefinite term of the contract which had run for more than a year, the employees undertook to oust the C. I. O. as their bargaining representative at a period during which it was appropriate to seek a redetermination of representatives (R. I, 75, 54–55). As the Board succinctly stated, in directing the election to resolve the question of representation raised by the A. F. L. as a result of the rival union activity in this case: "Neither the original nor supplemental contracts contain a definite termination date. In view of its indefinite duration and the fact that it has been in force for at least 1 year, we find that the contract and extensions thereof, do not constitute a bar to a determination of representatives" (R. III, 802, 799–805, R. II, 552). Upon this aspect of the case, there is no dispute as to the soundness of the Board's conclusion that the rival unionism of the A. F. L. adherents occurred during a protected period.

Underlying the Board's conclusion is the Board's well-settled rule concerning the length of time during which a union is immune from challenge by virtue of an existing collective-bargaining agreement which it has negotiated and administers as the exclusive representative. In determining whether a validly existing agreement

between an employer and a union precludes an election for the purpose of resolving a disputed question of representation, the Board balances the interest in industrial stability, resulting from affording a period of quiet enjoyment to an agreement arrived at through collective bargaining, with the need of affording to employees reasonable intervals at which they may oust or reaffirm their bargaining representatives.[95] In making that equation, it is the Board's settled practice, with certain presently immaterial refinements,[96] not to disturb a contract of reasonable duration containing a definite termination date until the approach of the expiration of the contract term.[97] Where, as here, the collective-bargaining agreement runs for an indefinite period,[98] the Board's rule at the time this case was decided

[95] National Labor Relations Board, Twelfth Annual Report (Gov't Print. Off. 1948), p. 9; National Labor Relations Board, Thirteenth Annual Report (Gov't. Print. Off. 1949), p. 29.

[96] Twelfth Annual Report, at pp. 9–14; Thirteenth Annual Report, at pp. 29–32.

[97] Twelfth Annual Report, at p. 9; Thirteenth Annual Report, at p. 29.

[98] Contracts of indefinite duration are customary in collective bargaining. See, e. g., *Matter of Irwin Auger Bit Company*, 68 N. L. R. B. 447; *Matter of Fairbanks, Morse & Co.*, 66 N. L. R. B. 673; *Matter of Joseph Lerner*, 63 N. L. R. B. 810; *Matter of Consolidated Vultee Aircraft Corporation*, 71 N. L. R. B. 1350, 1351–1352; *Matter of Duquesne Light Company*, 71 N. L. R. B. 336; *Matter of Waterfront Employers Asso.*, 71 N. L. R. B. 80, 88; *Matter of the Trailer Company of America*, 51 N. L. R. B. 1106; *Matter of Miami Copper Co.*, 71 N. L. R. B. 34; *Matter of Swift and Company*,

required that the union's immunity from challenge end after the contract has been in effect for one year,[9] and thereafter whenever a question concerning representation arises an election for the purpose of resolving it is timely.[1]

Writing with specific reference to contracts of indefinite duration, but adverting to the underlying considerations generally applicable in determining whether an existing contract of whatever duration bars a present representation contest, the Board has stated (*Matter of Trailer Company*, 51 N. L. R. B. 1106, 1109–1110, 1111):

> The Board has always held to the view * * * that its discretion with respect to the effect to be given to a collective bargaining contract in a representation case is limited by the necessity of balancing two separate interests of employees and society which the Act was clearly designed to foster and protect: namely, the interest in such stability as is essential to encourage "the practice and procedure of collective bar-

71 N. L. R. B. 727, 728; *Matter of Thomas Truck and Caster Co.*, 72 N. L. R. B. 847; *Matter of Lewis Meier & Co.*, 73 N. L. R. B. 520.

[9] Recently, "in the interest of promoting greater stability in industrial relations," the Board has extended to two years the period of immunity "accorded to long-term contracts and contracts of indefinite duration." *Matter of Puritan Ice Co.*, 74 N. L. R. B. 1311, 1313–1314, 20 L. R. R. M. 1268; *Matter of Filtrol Corp.*, 74 N. L. R. B. 1307; Twelfth Annual Report, at p. 10.

[1] National Labor Relations Board, Eleventh Annual Report (Gov't. Print. Off. 1947), p. 14; cf. Twelfth Annual Report, p. 10.

gaining," and the sometimes conflicting interest in the freedom of employees to select and change their representatives at will. In weighing these conflicting interests, the Board has developed its doctrine that a contract will bar an investigation to determine representatives for a definite and reasonable period, but no longer.

* * * * * *

There is nothing that is more likely to breed discontent among the employees or make for irresponsible union leadership than a policy which deprives workers of any voice in the conduct or identity of their representatives for an unreasonable length of time. Perhaps an appearance of stability may be achieved by a contract of extended duration but . . . ephemeral quality [characterizes] * * * such stability * * * We believe that to deny to employees the opportunity to select new bargaining representatives after a reasonable time serves to aggravate rather than minimize discord and to remove the foundation upon which stability may be based.

The basic validity of this accommodation of competing values was recognized by this Court in *Franks Bros. Company v. National Labor Relations Board,* 321 U. S. 702, 705–706. There this Court stated that the designation of a union as bargaining representative "is not intended to fix a permanent bargaining relationship without regard to new situations that may develop. * * *

But * * * a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. * * * After such a reasonable period the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships."[2]

The regular intervals so established for timely representation contests thus afford the appropriate periods during which employees may undertake advocacy of a rival union to displace a contracting union which has a closed-shop agreement. When, in the instant case, the A. F. L. adherents undertook activities looking toward the displacement of the C. I. O. as their bargaining representative, their rival unionism occurred more than four years after execution of the contract of indefinite duration (*supra*, pp. 4–8) and therefore during a time when it was appropriate to seek a change of representatives. As the court

[2] See also, *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 16–18 (C. A. 2); *National Labor Relations Board* v. *Century Oxford Manufacturing Corporation*, 140 F. 2d 541, 542 (C. A. 2), certiorari denied, 323 U. S. 714; *National Labor Relations Board* v. *Appalachian Electric Power Co.*, 140 F. 2d 247, 221–222 (C. A. 4); *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. 2d 876, 881–882 (C. A. 3); *National Labor Relations Board* v. *Blair Quarries, Inc.*, 152 F. 2d 25 (C. A. 4); *National Labor Relations Board* v. *Worcester Woolen Mills Corp.*, 170 F. 2d 13, 17 (C. A. 1), certiorari denied, 336 U. S. 903; *National Labor Relations Board* v. *Gatke Corp.*, 162 F. 2d 252 (C. A. 7).

below held, in an earlier case, the employer could not knowingly during such a period, at the behest of the incumbent, invoke the closed-shop agreement to place under a pall "the freest of open advocacy of the divergent views of the voters."[3] Whether the employees are ultimately successful through their electioneering in effecting a change is immaterial, since the very object of a protected period is to afford employees freedom from discrimination whether in victory or defeat. Uncoerced resort to the franchise cannot depend on success in its exercise.[4]

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

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National Labor Relations Board.

NOVEMBER 1949.

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[3] *Local No. 2880* v. *National Labor Relations Board*, 158 F. 2d 365, 369.

[4] *Matter of Lewis Meier & Company*, 73 N. L. R. B. 520, 534, set aside, 21 L. R. R. M. 2093 (C. A. 7).

APPENDIX

The relevant provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the

employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that

any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of ex-

traordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

The relevant provisions of the Labor Management Relations Act (61 Stat. 136, 29 U. S. C., Supp. II, sec. 141, *et seq.*), are as follows:

* * * * *

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United

States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organiza-

tion acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organiza-

tion as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

* * * * *

"PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

"[SEC. 10] (e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as

it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."

* * * * *

EFFECTIVE DATE OF CERTAIN CHANGES

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

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OCTOBER TERM, 1949

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Intervenors.

No. [redacted] 47

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Petitioner (Intervenor Below),

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent (Respondent Below),

and

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent (Petitioner Below),

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Respondents (Intervenors Below).

No. [redacted]

BRIEF FOR INTERNATIONAL CHEMICAL WORKERS UNION, AFL, IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
Statutes involved	3
Amplification of petitioners' statements of the case	3
I.	
Approval of the Rutland Court doctrine is implicit in the decision of this Court in Wallace Corporation v. N.L.R.B.	12
II.	
Intervening legislation has obviated the necessity of eliminating the conflict of decision among the Circuit Courts concerning the Rutland Court doctrine; the question is only of historical interest	14
III.	
The other grounds for certiorari asserted by petitioners are without merit	16
A. The contention that the decision of this court in the Wallace case merely precluded discriminatory enforcement of a closed shop agreement when such agreement was executed with a company dominated union is without merit	16
B. The contention that the decision of the Court of Appeals establishes a precedent which will permit recalcitrant union members to disrupt and unsettle contracts is without merit	17
C. The contention that the order and decision affirmed by the Court of Appeals defeats the purpose of the National Labor Relations Act and will defeat its policies is without merit	18
D. The contention that the Court of Appeals failed to review the instant case in accordance with standards promulgated in the Administrative Procedure Act and the Labor Management Relations Act is without merit	19
E. The contention that the Court of Appeals erred in sustaining the findings of fact of the Board is without merit	19

Table of Authorities Cited

Cases

	Pages
Aluminum Company of America v. N.L.R.B., 159 Fed. (2d) 253	15
Local No. 2880 v. N.L.R.B., 158 Fed. (2d) 365	14
Louis Meier Co. v. N.L.R.B., 21 L.R.R.M. 2093	15
Matter of Rutland Court Owners, 44 N.L.R.B. 587, 46 N.L.R.B. 1040	3, 13, 14, 18
N.L.R.B. v. American White Cross Laboratories, 167 Fed. (2d) 75	14
Wallace Corporation v. N.L.R.B., 323 U. S. 248, 89 L. Ed. 216	12, 13, 15, 16

Statutes

Administrative Procedure Act, 5 U.S.C.A., Section 1001 et seq., especially Section 1009(e)	3, 19
Judicial Code, Section 240(a)	2
Labor Management Relations Act, 1947, 29 U.S.C.A., Section 151 et seq., especially 29 U.S.C.A., Sections 157, 158(a)(1), 158(a)(3), 160(f)	2, 3
National Labor Relations Act, 29 U.S.C.A., Section 151 et seq., especially 29 U.S.C.A., Sections 157, 158(1) and (3), 159(a) and (c), 160(c)	3
National Labor Relations Act, Sections 8(a)(3)(A) and (B), (8)(b)(2), and 10(c)	15

Texts

"Legislative History of the Labor Management Relations Act of 1947", Volumes I and II, U. S. Government Printing Office (1948), Volume I, page 428 (Senate Report No. 105 on S. 1126), Volume II, page 937 (Extension of Remarks of Hon. James E. Murray), pages 952-953 (Memorandum of Hon. Wayne Morse)	15

Page

"The Supreme Court and Organized Labor, 1941-1945", E. Merrick Dodd, 48 Harvard Law Review 1018 at page 1039 (1945) 17

Rules

Rules of Supreme Court of the United States, Rule 35, paragraph 5(b) 2

In the Supreme Court of the United States

OCTOBER TERM, 1948

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Intervenors.

No. 694

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Petitioner (Intervenor Below),

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent (Respondent Below),

and

COLGATE-PALMOLIVE-PEET COMPANY,
Respondent (Petitioner Below),

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Respondents (Intervenors Below).

No. 695

BRIEF FOR INTERNATIONAL CHEMICAL WORKERS UNION, AFL, IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The International Chemical Workers Union, AFL, intervenor in the proceedings below, respectfully prays that the petition for certiorari submitted by the Colgate-Palmolive-Peet Company, and the companion petition submitted by Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union, CIO, be denied. Both petitions seek review of a judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case. The judgment in question enforces a decision and order of the National Labor Relations Board.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals, though not yet reported, is contained in the Record, pages 990-992. The decision and order of the National Labor Relations Board is reported in 70 N.L.R.B. 1202.

JURISDICTION.

The jurisdiction of this Court is invoked, as intervenors understand, under Section 240(a), Judicial Code, as amended, and Section 10(f) of the National Labor Relations Act, 29 U.S.C.A. 160(f) as amended by the Labor Management Relations Act, 1947. Petitioner, Colgate-Palmolive-Peet Company, also relies upon Rule 35, Paragraph 5(b) of this Court.[1]

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[1]In Petitioner's Brief, page 3, reference is made to Rule 38, Paragraph 5(b). This is, apparently, a printing error.

STATUTES INVOLVED.

The statutes involved are the following:

(1) The National Labor Relations Act, 29 U.S.C.A. 151, et seq., especially 29 U.S.C.A. 157, 158 (1) and (3), 159 (a) and (c), 160 (c).

(2) The Labor Management Relations Act, 1947, 29 U.S.C.A. 151, et seq., especially 29 U.S.C.A. 157, 158 (a) (1), 158 (a) (3), 160 (f).

(3) The Administrative Procedure Act, 5 U.S.C.A., Section 1001 et seq., especially Section 1009 (e).

The important sections are set forth in Appendix "A".

AMPLIFICATION OF PETITIONERS' STATEMENTS OF THE CASE.

In *Matter of Rutland Court Owners*, 44 N.L.R.B. 587, 46 N.L.R.B. 1040, the National Labor Relations Board first denominated as an unfair labor practice the discharge of employees pursuant to a closed shop contract when the employer had knowledge that the incumbent union's requests for discharge were based upon the employees' advocacy of a rival union during representation proceedings.

Since it would manifestly be improper for the employer, on his own initiative, to discharge an employee for engaging in circumspect activities leading to the selection of a bargaining representative, the Board has, counsel submit, properly precluded him from doing, at the instigation or request of another, that which he is forbidden to do directly.

Nevertheless, as the *Rutland Court* doctrine is a restriction upon the closed-shop contract, it has been strictly limited to situations wherein:

(1) the employer, pursuant to a closed shop contract, discharges or refuses to rehire an employee,

(2) at the request of the contracting union when, *to the employer's knowledge,* the contracting union requested the discharge or counseled the refusal to rehire because the employee had engaged in rival union activities,

(3) during a period when it was appropriate for employees to seek a change of bargaining representatives.

Each of these elements has been abundantly, if not overwhelmingly, established by the evidence in the instant proceedings. The fact of discharge by the employer, at the request of the contracting union, is not contested; the refusal of reinstatement to certain employees so discharged is, also, not controverted. That the employees were engaged in activities during a period when it was appropriate to seek a change of bargaining representatives is, apparently, likewise conceded. The petitioners, however, stoutly maintained before the Board and the Circuit Court, and here contend, insufficient evidence was adduced in the proceedings to establish that the company had knowledge of the union's purpose in requesting the discharges. For this reason, and without embarking upon an extensive analysis of the Record, counsel for Intervenor desires to draw the attention of this Court to certain portions of the Record establishing such knowledge. The

portions in question are, in varying degrees, omitted or glossed over in Petitioners' statements of the matter involved in the petitions.

A partial chronology will serve this purpose:

Early 1945: Dissatisfaction with the C.I.O. is developing in the plant. (R.I, 25; R.I, 225-226).

July 20, 1945: Employer's Vice President, B. W. Railey, requests presence of the five plant stewards when the contract was to be extended, because of impending labor troubles and employee unrest (R.I, 188-189, 225-226).

July 28, 1945: Five plant stewards, pursuant to decisions formulated at an earlier meeting, seeking a change of bargaining representative, post on the bulletin boards throughout the plant, a notice of meeting inviting all interested in joining "Employees Welfare Association" to be present at a certain meeting hall on July 30, 1945 (R.I, 69, 27; R.I, 191-192, 255-256).

Superintendent informs Labor Relations Director of the Notice (R.III, 667-668, R.I, 255-256).

July 28 or 29, 1945: One steward and an employee obtain permission from the Superintendent for a plant shutdown of two hours in order that employees may attend the meeting (R.I, 69-70; R.I, 268-269).

July 30, 1945: On the day of the scheduled meeting, C.I.O. agents request discharge of the five stewards leading the anti-C.I.O. organizational drive on the ground that they have been "suspended from membership" in the C.I.O. "pending a trial" (R.I, 27-28; R.III, 668-669, 784-785, R.I, 259, 256).

After a conference between the Superintendent and Vice President (R.II, 522, R.III, 669-670), the Vice President discharges the five stewards (R.I, 70, 29; R.I, 194, 256-257, 288-289).

C.I.O. agents distribute throughout the plant bulletin stating:

ATTENTION

All Warehouse Union Members: An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

WARNING

Any member of Local 6 who attends such illegal meeting or participates in violation of our constitution, does so at the risk of losing membership and employment.

General Executive Board
Warehouse Union
Local No. 6, I.L.W.U.

(R.I, 70, 31-32; R.I, 256; R.III, 785; R.I, 259).

According to the Vice President the plant was "in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done" (R.I, 36; R.II, 528).

More than 200 of the 313 employees within the bargaining unit attend the scheduled anti-C.I.O. meeting (R.I, 70, 32; R.I, 196, 256). Employees attending unanimously decide to form an independent union, the

"Employees Welfare Association", as an intermediate step until affiliation with an international union can be effected (R.I, 70, 32; R.I, 196, 200-201, 261, 288; R.III, 848; R.I, 259). Four employees are designated committeemen and directed to demand reinstatement of the discharged stewards and, if they should be unable to obtain reinstatement, all employees would cease work in protest (R.I, 70, 33; R.I, 196, 199; R.III, 849; R.I, 259).

Telegrams are sent to the C.I.O. and employer's Vice President by the "Negotiating Committee" of the "Employees Welfare Association" notifying them of the fact that more than 200 employees have severed relations with ILWU-6 as collective bargaining agent (R.I, 70-71, 34; R.I, 257; R.III, 786-787; R.I, 259).

July 31, 1945: The four committeemen request reinstatement of the discharged stewards (R.I, 71; R.I, 257, R.II, 360-361).

C.I.O. agents, committeemen, the Company's Vice President and Superintendent gather in the office of the Vice President (R.I, 35; R.II, 361, 527).

Vice President admits "it became quite apparent as this conversation took place that there was a schism developing in the ranks of the C.I.O." (R.II, 545-546).

During this meeting, C.I.O. agents notify committeemen that suspension notices are being prepared for them (R.I, 71; R.I, 263-264).

Employer receives formal request for discharge of the four committeemen (R.I, 71, 36-37; R.III, 673-675, 846-847).

C.I.O. agents circulate another bulletin in the plant stating that those associating and advocating the cause of the four committeemen would jeopardize "their • • • reputation • • • union standing • • • seniority, and their jobs" (R.I, 71, 37-38; R.III, 789; R.I, 257, 259).

A second anti-C.I.O. meeting is held at noon and attended by a majority of the employees (R.I, 71, 38; R.I, 257). The Vice President of the Petitioner attended the meeting and stated that reinstatement of stewards was impossible (R.I, 72, 38-39; R.I, 257-258; R.II, 529-531).

Employees vote in protest not to return to work and two and one-half day strike of a majority of the employees commences (R.I, 72, 38-39; R.I, 202, 258, 266; R.III; 677, 850-851; R.II, 533).

August 2, 1945: Majority of employees attend third anti-C.I.O. meeting and it is decided to affiliate with the International Chemical Workers' Union, A.F.L., to return to work, and to request an election be conducted by the National Labor Relations Board (R.I, 72, 40; R.I, 258, R. III, 851-852, R.I, 259).

August 2, 1945: Petitioner's Superintendent notifies the four committeemen that, in view of their suspension by the C.I.O., it would be futile for them to return (R.I, 72, 39-40; R.I, 258, 266-268, R.II, 378, R.III, 806-807, R.II, 654-656).

August 8, 1945: The A.F.L., C.I.O., and the Petitioner meet to discuss a petition for change of representa-

tives filed with the N.L.R.B. on August 3, 1945 (R.II, 549-552).

Petitioner's Vice President agreed that, by this date, it was apparent that a campaign for change of representatives was in progress (R.I, 72; R.II, 547).

August 11, 1945: Employee Zulaica reports to foreman, that C.I.O. official warned him active advocacy of A.F.L. would lead to dismissal and that the C.I.O. would not have to have the majority discharged but "can pick some of you out and claim that you were the leaders, and that will scare the rest of them". Employee requests foreman to talk to the Superintendent (R.I, 41; R.II, 305-310).

Employee Zulaica informed in afternoon by Assistant Superintendent "I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union". (R.I, 73; R.I, 310-312).

August 17, 1945: The five stewards and four committeemen request and are denied reinstatement. (R.I, 73; R.I, 266-267, 289-290; R.II, 341-342, 380-381, 427, R.III, 679-680, 699-700).

August 30, 1945: C.I.O. official demands Petitioner discharge about 70 employees (R.I, 73-74; R.III, 728-731). Petitioner's Labor Relations Director replies "• • • this thing has gone too far. You are getting

too many people involved here * * *" and refuses to comply. (R.I, 74; R.III, 730).

August 31, 1945: C.I.O. requests the discharge of six employees and the Petitioner complied with the request. (R.I, 46; R.III, 806-807, R.II, 654-656). All of these employees had joined the A.F.L., worn A.F.L. buttons in the plant and had taken an active role in the A.F.L. organization. (R.II, 656-657, 506-507). The discharges were effected pursuant to a check of the union dues books of all employees (R.I, 46; R.III, 681, 682, 709-716), but it was stipulated that the C.I.O. did not request their discharge on the ground of non-payment of dues. (R.II, 518).

September 1, 1945: C.I.O. requests and obtains the discharge of eighteen employees. (R.I, 74, 46-47; R.III, 806-807; R.II, 654-656). Petitioner assembled the discharged employees and the employees were informed by Petitioner's Labor Relations Director "If you had kept this quiet about the A.F.L. this wouldn't have happened to you" (R.I, 316), and that "If we (discharged employees) didn't wear A.F.L. buttons and didn't talk too much, why, we wouldn't get in this trouble in the first place" (R.II, 577) and that "We talked too much, that if we had kept our mouths shut we wouldn't have got into this mess". (R.II, 488-489).

September 5, 1945: One more employee, active on behalf of the A.F.L., is discharged pursuant to a request by the C.I.O. (R.I, 51-52; R.II, 631-635).

September 7, 1945: Two more employees, active on behalf of the A.F.L., are discharged pursuant to a request by the C.I.O. (R.I, 50; R.III, 806-807; R.II, 654-656).

September 11, 1945: One employee, working as a machinist under A.F.L. jurisdiction, active on behalf of the A.F.L., is discharged. This particular employee was notified by the Labor Relations Director that he, alone, was required to join the C.I.O. He applied for transfer to the C.I.O. but was refused admission. Other machinists were allowed to continue work without joining the C.I.O. (R.I, 50 and n. 20, 52; R.II, 641-642, 645-646; R.III, 806-807).

In addition to the events of the above particularized dates which cumulatively demonstrate a calculated campaign to eliminate the leadership of a rival organization in advance of an election, the record is replete with indications and direct evidence that the campaign in the plant during the above period was characterized by considerable intensity and bitterness. (R.I, 72, 41; R.I, 299-301, 305-314; R.II, 387-388, 391-394, 411-414, 433-436, 475-478, 481-488, 580, 583-584, 592-594, 631-632). The C.I.O. pointedly reminded the employees by bulletins and oral threats that allegiance to the A.F.L. was tantamount to a tacit request for discharge. (R.I, 72, 77, 43-44; R.I, 299-300, 305-314; R.II, 438-439, 475, 481-488, 516, 564, 580-581, 592-594, 608-609, 631-632, R.III, 785, 789-790). During this period Superintendent Altman and the Labor Relations Director were making daily tours of the plant. (R.I, 180-182, R.III, 696-697, 757-758). During the course of the campaign, the Labor Relations Director received the union papers. (R. III, 759-760). It was the practice of the Superintendent

(R.III, 686-687) and the Labor Relations Director (R.III, 759) to scrutinize the bulletin boards.

On January 13, 1949, the Court of Appeals affirmed the decision of the Board (R.IV, 990-992) and its findings: (a) that the C.I.O. sought to use the closed-shop contract for the purpose of punishing the insurgents, and (b) that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union had suspended the men in reprisal for their activities in favor of the rival union. The Court succinctly stated, "The evidence abundantly supports these findings".

Intervenors oppose the petition for certiorari in the instant proceeding upon the following grounds:

(1) Approval of the Rutland Court doctrine is implicit in the decision of this Court in Wallace Corp. v. N.L.R.B., 323 U.S. 251, 89 L. Ed. 216.

(2) Intervening legislation has obviated the necessity of eliminating the conflict of decision among the circuit courts concerning the propriety of the Rutland Court doctrine; the question is only of historical interest.

(3) The other grounds for certiorari asserted by petitioner are without merit.

APPROVAL OF THE RUTLAND COURT DOCTRINE IS IMPLICIT IN THE DECISION OF THIS COURT IN WALLACE CORPORATION v. NLRB.

The principal ground for the petition is a quest to review approval by the Circuit Court of the *Rutland Court* doctrine (*Matter of Rutland Court Owners*, 44 N.L.R.B.

587; 46 N.L.R.B. 1040) and application of the doctrine to the instant case.

Simply stated by the Board, the Rutland Court doctrine denominates as an unfair labor practice the discharge of an employee under a union or closed shop contract when the Board finds that the employer has knowledge that the contracting union desired the discharge because of the activities of the employee on behalf of a rival union during a period when it is appropriate to seek a redetermination of representatives.

In *Wallace Corporation v. N.L.R.B.* 323 U.S. 248, 89 L. Ed. 216, this Court expressly affirmed the power of the Board to denominate as an unfair labor practice the discharge of certain employees pursuant to a closed shop contract when the employer had knowledge that the incumbent union's request for discharge were based on the employees' advocacy of a rival union during prior representation proceedings. In language directly applicable to the instant proceeding, Justice Black, speaking for the majority, stated:

> "We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers. It was as much of a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with Independent as it would have been had the company done it alone."

Indeed, in the instant case there is strong evidence to indicate that the company effected the discharges at a time when the incumbent union was facing the likelihood of repudiation at the polls.[2] If it is wrong for a company to assist a union, triumphant at the polls, in ridding itself of dissidents, *a fortiori* it is wrong, in a pre-election campaign, to assist the incumbent in the ruthless elimination of a mass of employees who, in the exercise of their privilege of freedom of association, are honestly seeking, at a proper time, a change of representatives. To hold otherwise would be tantamount to a denial of any privilege of employees, at any time, to challenge effectively the majority status of the incumbent union.

II.

INTERVENING LEGISLATION HAS OBVIATED THE NECESSITY OF ELIMINATING THE CONFLICT OF DECISION AMONG THE CIRCUIT COURTS CONCERNING THE PROPRIETY OF THE RUTLAND COURT DOCTRINE; THE QUESTION IS ONLY OF HISTORICAL INTEREST.

It is true, as Petitioner has urged,[3] that the Circuit Courts have differed upon the propriety of the *Rutland Court* doctrine. The Ninth Circuit has endorsed the doctrine in the instant case and in *Local No. 2880 v. N.L.R.B.*, 158 Fed. (2nd) 365. The Second Circuit has also approved the doctrine in *N.L.R.B. v. American White Cross Laboratories*, 167 Fed. (2nd) 75. The Seventh Circuit is alone

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[2] After the discharge of five plant stewards active in organization against the incumbent union *a majority of the employees* left the plant in protest (R.I, 71, 38; R.I, 257).

[3] Petition of Colgate-Palmolive-Peet Co., page 25.

in repudiating the Board's policy. *Aluminum Company of America v. N.L.R.B.*, 159 Fed. (2nd) 253. *Louis Meier Co. v. N.L.R.B.*, 21 L.R.R.M. 2093.

Whatever importance attached to the necessity of uniformity of decision in the Circuit Courts upon the *Rutland Court* doctrine has been rendered academic by the subsequent amendment of the National Labor Relations Act (Sections 8 (a) (3) (A) and (B), 8 (b) (2), and 10 (c)). Both the instant case and the Seventh Circuit decision involved the interpretation of the Act prior to amendment. Counsel for Intervenors respectfully submit that, if its interpretation of the *Wallace Corporation* case is correct, there is no necessity for this Court to assume jurisdiction of the instant case in order to cope with a spectre of dead law. Congress has effectively embodied and endorsed the *Rutland Court* doctrine in existing labor legislation. Indeed, both proponents and opponents of the Taft-Hartley amendments spoke with approval of the *Rutland Court* decision.[4]

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[4] "Legislative History of the Labor Management Relations Act of 1947", Volumes I and II, U. S. Government Printing Office (1948), Vol. I, p. 428 (Senate Report No. 105 on S. 1126), Vol. II, p. 937 (Extension of Remarks of Hon. James E. Murray), pp. 952-953 (Memorandum of Hon. Wayne Morse).

III.

THE OTHER GROUNDS FOR CERTIORARI ASSERTED BY PETITIONER ARE WITHOUT MERIT.

A. The contention that the decision of this Court in the Wallace case merely precluded discriminatory enforcement of a closed shop agreement when such agreement was executed with a company dominated union is without merit.

Petitioner has urged that this Court's decision in the *Wallace* case applies "solely to the unfair labor practices of an employer committed through the medium of a dominated or company union".[5]

This conclusion is reached by stressing the words "medium of a 'union of its own creation'" appearing in a paragraph of the decision clearly designed to indicate that the company could not accomplish by indirection that which it could not do directly.

The contention completely overlooks the fact that the Board had adopted the principle of refusing to inquire into charges of company domination after a settlement, unless there had been a subsequent unfair labor practice. The Board found there had been a subsequent unfair labor practice in the discharge of the C.I.O. adherents.

As stated by one commentator:

> "Despite the uncertainty as to the scope of the decision brought about by the use of the words "union of its own creation" it is probably safe to assume that the learned Justice and those who concurred in his opinion would sustain the Board's view that it made no difference whether the union at whose behest

[5]Petition of Colgate-Palmolive-Peet Co., pages 25-26, 49-52.

the employer acted was or was not company-dominated or assisted."

E. Merrick Dodd, "The Supreme Court and Organized Labor, 1941-1945", 48 *Harvard Law Review* 1018 at p. 1039 (1945).

B. The contention that the decision of the Court of Appeals establishes a precedent which will permit recalcitrant union members to disrupt and unsettle contracts is without merit.

The contention has been advanced that the decision gives "tacit approval to the proposition that employees may refuse to maintain membership in a union, though this be required as a condition of employment".[6]

This contention is directly contrary to the findings of fact by the Board. As the Board concluded:

> "As for the complainants' withdrawal from the C.I.O., which would ordinarily entitle the (employer) to discharge them in view of the closed shop contract, it will be observed that the C.I.O. did not accept their withdrawals nor is there any evidence that the (employer) discharged them or rejected the reinstatement application of the stewards and the committeemen for that reason. On the contrary, the (employer's) answer and evidence show beyond dispute that the (employer) acted because of the complainants' suspension by the C.I.O. pending determination of charges of anti-C.I.O. activity, and that the attempted withdrawals played no part therein." R.I, 78, n. 8.

Pursuing this train of thought, the petitioner then speculates that the decision may impair "the right of labor unions to secure the discharge of a union member, while

[6]Petition of Colgate-Palmolive-Peet Co., pages 27-28, 52-56.

he remains a union member, except in the single instance where the discharge is sought to discourage or encourage membership in a labor organization".[7]

It is sufficient to say that the instant case does not involve such an issue; it has not been mentioned by the Board, it was not mentioned by the Circuit Court. The present case simply involves discharges sought to discourage membership or advocacy of a rival labor organization. To ask this Court to grant certiorari in order to engage in an abstract discussion of issues not involved in the proceeding is, indeed, a novel and unsound suggestion.

C. The contention that the order and decision affirmed by the Court of Appeals defeats the purpose of the National Labor Relations Act and will not effectuate its policies is without merit.

Petitioner also advances the contention that, since the employees participated in an unauthorized strike, it would not effectuate the purposes of the Act to affirm the decision and order.[8]

Apart from the well-recognized principle recognizing that the Board is invested with discretion in determining the media best designed to effectuate the purposes of the Act, the Petitioner also overlooks the very obvious facts:

(1) that a portion of the discharges preceded the unauthorized work stoppage.

(2) that the employer and the union, at all times, had it within their power to terminate the stoppage by cessation of the unfair labor practices.

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[7]Petition of Colgate-Palmolive-Peet Co., page 54.
[8]Petition of Colgate-Palmolive-Peet Co., pages 56-58.

(3) that the employees had no other effective weapon to halt attrition of their ranks. Certainly, it was an unauthorized strike. Its very purpose was to protest against the practices of the employer and the incumbent union.

(4) that the Board, in its analysis of the facts, determined that participation in the work stoppage was not the moving cause of the discharges.

D. The contention that the Court of Appeals failed to review the instant case in accordance with standards promulgated in the Administrative Procedure Act and the Labor Management Relations Act is without merit.

Petitioner also asserts the Court of Appeals failed to review the record as a whole.[9] Since there is nothing beyond surmise to support this contention, counsel submit the ground so advanced is not worthy of consideration.

In regard to the asserted failure to decide all relevant questions of law, the Administrative Procedure Act makes it incumbent upon the Court only to decide all relevant questions of law "so far as necessary to decision".[10] Counsel submit that, in view of the previous explicit holdings of the Court of Appeals, there was no necessity for it to encumber its decision in the instant case with dicta upon legal issues unnecessary to decision.

E. The contention that the Court of Appeals erred in sustaining the findings of fact of the Board is without merit.

The final contention made by Petitioner is that the Court of Appeals erred in affirming the findings of the

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[9] Petition of Colgate-Palmolive-Peet Co., pages 29, 58-61.
[10] 5 U.S.C.A. 1009(e).

Board with respect to the Petitioner's knowledge of the C.I.O.'s motive in requesting the discharges.[11] More particularly, the Petitioner has dissected from the Record one minute aspect of the factual setting and asserts that since inference was substituted for available direct testimony on this fragment of the case, the entire Record should be reappraised. The summary of testimony previously set forth, *supra*, pp. 5 to 12, indicates that this particular fragment of the case was not decisive in the findings of the Board that the employer had knowledge of the C.I.O.'s discriminatory purpose in demanding discharge of the stewards.

Similarly, the Petitioner contends that, since the union may have had other grounds for requesting the discharge, the Board erred in placing the duty upon the employer to evaluate the evidence and determine whether the C.I.O. was primarily acting in reprisal against the anti-C.I.O. activities of the employees in requesting the discharges.

Of course, this is not the issue. The question before the Board and before the Court of Appeals was whether the employer had knowledge that the impelling motivation of the C.I.O. in requesting the discharges was a desire to stifle the free expression of the employees. This is a question of sheer fact which the Board and the Court of Appeals found against the employer. Since this finding is supported by substantial evidence upon the Record considered as a whole, the choice of language employed by the Board to dispose of the employer's contention that he could rely upon the possible existence of other reasons for

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[11]Petition of Colgate-Palmolive-Peet Co., pages 29-30, 61-63.

the union's requests for discharges, in the face of the obvious and known reason, is manifestly an insufficient ground for granting certiorari to review the entire proceeding.

Wherefore, for the reasons above set forth, it is respectfully submitted that the petitions for writ of certiorari in the instant proceeding should be denied.

Dated, San Francisco, California,
May 2, 1949.

MATHEW O. TOBRINER,
Counsel for Respondent
(Intervenor Below).

(Appendix "A" Follows.)

Appendix "A"

29 U.S.C.A. 157 (National Labor Relations Act):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

29 U.S.C.A. 158 (National Labor Relations Act):

"It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) • • • ;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in sections 151-166 of this title or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a), in the appropriate collective bargaining unit covered by such agreement when made."

29 U.S.C.A. 159 (a) (National Labor Relations Act):

"Representatives designated or selected for the purpose of collective bargaining by the majority of

the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or group of employees shall have the right at any time to present grievances to their employer."

29 U.S.C.A. 159 (c) (National Labor Relations Act):

"Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 160 of this title or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

29 U.S.C.A. 160 (c) (National Labor Relations Act):

"The testimony taken by such member, agent or agency of the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will

effectuate the policies of this chapter. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

29 U.S.C.A. 157 (Labor Management Relations Act):

"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

29 U.S.C.A. 158 (Labor Management Relations Act, 1947):

"(a) It shall be unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) * * * ;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this

sub-chapter or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 158 (a) of this title as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made; * * *: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (a) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms ad conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

29 U.S.C.A. 160 (f) (Labor Management Relations Act, 1947):

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written peti-

tion praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

5 U.S.C.A. 1009 (e) (Administrative Procedure Act):

"So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) un-

supported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

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OCTOBER TERM, 1949

No. 47 47

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

THE NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L., et al.,
Intervenors,

and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Intervenors.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.

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Subject Index

	Page
Jurisdiction	2
Statute Involved	2
Amplification of Petitioner's Statement of the Case	2
Statement of the Issue	10
Summary of Argument	11
Argument	11
The Rutland Court doctrine is a logical consequent of the purpose and language of the Act	12
The proviso to Section 8 (3) was designed to disclaim a national policy hostile to the closed shop contract and not to create a medium for the nullification of privileges conferred by Section 7 of the Act	16
The Rutland Court doctrine is supportable on ordinary contract and agency principles	18
Approval of the Rutland Court doctrine is implicit in the decision of this court in Wallace Corporation v. N.L.R.B.	22

Table of Authorities Cited

Cases

	Pages
Algoma Plywood Co. v. Wisconsin Board, 336 U.S. 301 (1949)	18
Austin v. Searing, 16 N.Y. 112 (1857)	21
Hunt v. Crumboch, 325 U.S. 821 (1945)	21
Local No. 2880 v. N.L.R.B., 158 Fed. (2d) 365	18
Matter of Rutland Court Owners, 44 N.L.R.B. 587	2, 3, 11, 12, 15, 17, 20
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937)	13
Schneider v. Local No. 60, 116 La. 270, 40 So. 700 (1905)	21
Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 Atl. 70 (1921)	21
Steele v. Louisville & National Railroad, 65 Sup. Ct. 226 (1944)	19, 20, 21
Wallace Corporation v. N.L.R.B., 323 U.S. 248	11, 21, 22

Statutes

Judicial Code, Section 240(a), 28 USCA 1254(1)	2
National Labor Relations Act of 1935, Section 10 (e) and (f), as amended by the Labor Management Relations Act of 1947 (29 USCA 151 et seq.):	
Section 7	13, 15, 16, 18
Sections 8, 9 and 10	13, 15
Section 8(1)	13
Section 8(3)	2, 11, 13, 16, 17, 18
Section 10 (e) and (f)	2

Texts

Bertram Wilcox, "The Triboro Case—Mountain or Molehill", 56 Harvard Law Rev. 576, at pp. 594-595 (1943)	17

Page

E. Merrick Dodd, "The Supreme Court and Organized Labor, 1941-1945", 48 Harvard Law Rev. 1018, at p. 1039 (1945) 24

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In the Supreme Court
OF THE
United States

October Term, 1949

No. 47

COLGATE-PALMOLIVE-PEET COMPANY,
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and

WAREHOUSE UNION LOCAL 6, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (C.I.O.),
Intervenors.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR
INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.

JURISDICTION.

The jurisdiction of this Court is invoked by petitioner upon Section 240(a), Judicial Code, as amended, 28 USCA 1254 (1), and Section 10 (e) and (f) of the National Labor Relations Act of 1935, as amended by the Labor Management Relations Act of 1947.

STATUTE INVOLVED.

The statute involved is the National Labor Relations Act of 1935, 29 USCA 151 et seq., especially 29 USCA 157, 158 (1) and (3).

AMPLIFICATION OF PETITIONER'S STATEMENT OF THE CASE.

Petitioner here seeks a review of the application of Section 8(3) of the National Labor Relations Act of 1935 to the factual setting disclosed in the instant proceedings. The Board, by application of the doctrine first particularly enunciated in *Matter of Rutland Court Owners*, 44 N.L.R.B. 587, charged the petitioner with unfair labor practices resulting from his discharge of employees pursuant to a closed shop contract when he had knowledge that the incumbent union's requests for discharge were based upon the employees' advocacy of a rival union during a period when it was appropriate for employees to seek a change of bargaining representatives.

Reiterating the facts disclosed by the Record in the instant proceeding, set forth in this intervenor's brief in

opposition to the petition for a writ of certiorari, it is manifest that each of the elements requisite to the application of the *Rutland Court Doctrine* has been abundantly, if not overwhelmingly, established by the evidence in the instant proceeding. The portions of the Record hereinbelow set forth are, in varying degrees, omitted or glossed over in petitioner's statement of the case. A partial chronology of the events in petitioner's plant will serve the purpose of establishing the knowledge of the employer of the union's purpose in requesting the discharge:

Early 1945: Dissatisfaction with the C.I.O. is developing in the plant. (R.I, 25; R.I, 225-226).

July 20, 1945: Employer's Vice President, B. W. Railey, requests presence of the five plant stewards when the contract was to be extended, because of impending labor troubles and employee unrest (R.I, 188-189, 225-226).

July 28, 1945: Five plant stewards, pursuant to decisions formulated at an earlier meeting, seeking a change of bargaining representative, post on the bulletin boards throughout the plant, a notice of meeting inviting all interested in joining "Employees Welfare Association" to be present at a certain meeting hall on July 30, 1945 (R.I, 69, 27; R.I, 191-192, 255-256).

Superintendent informs Labor Relations Director of the Notice (R.III, 667-668, R.I, 255-256).

July 28 or 29, 1945: One steward and an employee obtain permission from the Superintendent for a plant shut-

down of two hours in order that employees may attend the meeting (R.I, 69-70; R.I, 268-269).

July 30, 1945: On the day of the scheduled meeting, C.I.O. agents request discharge of the five stewards leading the anti-C.I.O. organizational drive on the ground that they have been "suspended from membership" in the C.I.O. "pending a trial" (R.I, 27-28; R.III, 668-669, 784-785, R.I, 259, 256).

After a conference between the Superintendent and Vice President (R.II, 522, R.III, 669-670), the Vice President discharges the five stewards (R.I, 70, 29; R.I, 194, 256-257, 288-289).

C.I.O. agents distribute throughout the plant bulletin stating:

ATTENTION

All Warehouse Union Members: An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

WARNING

Any member of Local 6 who attends such illegal meeting or participates in violation of our constitution, does so at the risk of losing membership and employment.

General Executive Board
Warehouse Union
Local No. 6, I.L.W.U.

(R.I, 70, 31-32; R.I, 256; R.III, 785; R.I, 259).

According to the Vice President the plant was "in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done" (R.I, 36; R.II, 528).

More than 200 of the 313 employees within the bargaining unit attend the scheduled anti-C.I.O. meeting (R.I, 70, 32; R.I, 196, 256). Employees attending unanimously decide to form an independent union, the "Employees Welfare Association", as an intermediate step until affiliation with an international union can be effected (R.I, 70, 32; R.I, 196, 200-201, 261, 288; R.III, 848; R.I, 259). Four employees are designated committeemen and directed to demand reinstatement of the discharged stewards and, if they should be unable to obtain reinstatement, all employees would cease work in protest (R.I, 70, 33; R.I, 196, 199; R.III, 849; R.I, 259).

Telegrams are sent to the C.I.O. and employer's Vice President by the "Negotiating Committee" of the "Employees Welfare Association" notifying them of the fact that more than 200 employees have severed relations with ILWU-6 as collective bargaining agent (R.I, 70-71, 34; R.I, 257; R.III, 786-787; R.I, 259).

July 31, 1945: The four committeemen request reinstatement of the discharged stewards (R.I, 71; R.I, 257, R.II, 360-361).

C.I.O. agents, committeemen, the Company's Vice President and Superintendent gather in the office of the Vice President (R.I, 35; R.II, 361, 527).

Vice President admits "it became quite apparent as this conversation took place that there was a schism developing in the ranks of the C.I.O." (R.II, 545-546).

During this meeting, C.I.O. agents notify committeemen that suspension notices are being prepared for them (R.I, 71; R.I, 263-264).

Employer receives formal request for discharge of the four committeemen (R.I, 71, 36-37; R.III, 673-675, 846-847).

C.I.O. agents circulate another bulletin in the plant stating that those associating and advocating the cause of the four committeemen would jeopardize "their • • • reputation • • • union standing • • • seniority, and their jobs" (R.I, 71, 37-38; R.III, 789; R.I, 257, 259).

A second anti-C.I.O. meeting is held at noon and attended by a majority of the employees (R.I, 71, 38; R.I, 257). The Vice President of the Petitioner attended the meeting and stated that reinstatement of stewards was impossible (R.I, 72, 38-39; R.I, 257-258; R.II, 529-531).

Employees vote in protest not to return to work and two and one-half day strike of a majority of the employees commences (R.I, 72, 38-39; R.I, 202, 258, 266; R.III, 677, 850-851; R.II, 533).

August 2, 1945: Majority of employees attend third anti-C.I.O. meeting and it is decided to affiliate with the International Chemical Workers' Union, A.F.L., to return to work, and to request an election be conducted

by the National Labor Relations Board (R.I, 72, 40; R.I, 258, R.III, 851-852, R.I, 259).

August 2, 1945: Petitioner's Superintendent notifies the four committeemen that, in view of their suspension by the C.I.O., it would be futile for them to return (R.I, 72, 39-40; R.I, 258, 266-268; R.II, 378, R.III, 806-807; R.II, 654-656).

August 8, 1945: The A.F.L., C.I.O., and the Petitioner meet to discuss a petition for change of representatives filed with the N.L.R.B. on August 3, 1945 (R.II, 549-552).

Petitioner's Vice President agreed that, by this date, it was apparent that a campaign for change of representatives was in progress (R.I, 72; R.II, 547).

August 11, 1945: Employee Zulaica reports to foreman, that C.I.O. official warned him active advocacy of A.F.L. would lead to dismissal and that the C.I.O. would not have to have the majority discharged but "can pick some of you out and claim that you were the leaders, and that will scare the rest of them". Employee requests foreman to talk to the Superintendent (R.I, 41; R.II, 305-310).

Employee Zulaica informed in afternoon by Assistant Superintendent "I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union". (R.I, 73; R.II, 310-312).

August 17, 1945: The five stewards and four committeemen request and are denied reinstatement. (R.I, 73; R.I, 266-267, 289-290; R.II, 341-342, 380-381, 427; R.III, 679-680, 699-700).

August 30, 1945: C.I.O. official demands Petitioner discharge about 70 employees (R.I, 73-74; R.III, 728-731). Petitioner's Labor Relations Director replies "• • • this thing has gone too far. You are getting too many people involved here • • •" and refuses to comply. (R.I, 74; R.III, 730).

August 31, 1945: C.I.O. requests the discharge of six employees and the Petitioner complied with the request. (R.I, 46; R.III, 806-807, R.II, 654-656). All of these employees had joined the A.F.L., worn A.F.L. buttons in the plant and had taken an active role in the A.F.L. organization. (R.II, 656-657, 506-507). The discharges were effected pursuant to a check of the union dues books of all employees (R.I, 46; R.III, 681, 682, 709-716), but it was stipulated that the C.I.O. did not request their discharge on the ground of nonpayment of dues. (R.II, 518).

September 1, 1945: C.I.O. requests and obtains the discharge of eighteen employees. (R.I, 74, 46-47; R.III, 806-807; R.II, 654-656). Petitioner assembled the discharged employees and the employees were informed by Petitioner's Labor Relations Director "If you had kept this quiet about the A.F.L. this wouldn't have happened to you" (R.I, 316), and that "If we (discharged employees) didn't wear A.F.L. buttons and didn't talk too much, why, we wouldn't get in

this trouble in the first place" (R.II, 577) and that "We talked too much, that if we had kept our mouths shut we wouldn't have got into this mess". (R.II, 488-489).

September 5, 1945: One more employee, active on behalf of the A.F.L., is discharged pursuant to a request by the C.I.O. (R.I, 51-52; R.II, 631-635).

September 7, 1945: Two more employees, active on behalf of the A.F.L., are discharged pursuant to a request by the C.I.O. (R.I, 50; R.III, 806-807; R.II, 654-656).

September 11, 1945: One employee, working as a machinist under A.F.L. jurisdiction, active on behalf of the A.F.L., is discharged. This particular employee was notified by the Labor Relations Director that he, alone, was required to join the C.I.O. He applied for transfer to the C.I.O. but was refused admission. Other machinists were allowed to continue work without joining the C.I.O. (R.I, 50 and n. 20, 52; R.II, 641-642, 645-646; R.III, 806-807).

In addition to the events of the above particularized dates which cumulatively demonstrate a calculated campaign to eliminate the leadership of a rival organization in advance of an election, the record is replete with indications and direct evidence that the campaign in the plant during the above period was characterized by considerable intensity and bitterness. (R.I, 72, 41; R.I, 299-301, 305-314; R.II, 387-388, 391-394, 411-414, 433-436, 475-478, 481-488, 580, 583-584, 592-594, 631-632). The C.I.O. pointedly reminded the employees by bulletins and oral threats that allegiance to the A.F.L. was tantamount to a tacit request

for discharge. (R.I, 72, 77, 43-44; R.I, 299-300, 305-314; R.II, 438-439, 475, 481-488, 516, 564, 580-581, 592-594, 608-609, 631-632, R.III, 785, 789-790). During this period Superintendent Altman and the Labor Relations Director were making daily tours of the plant. (R.I, 180-182, R.III, 696-697, 757-758). During the course of the campaign, the Labor Relations Director received the union papers. (R. III, 759-760). It was the practice of the Superintendent (R.III, 686-687) and the Labor Relations Director (R.III, 759) to scrutinize the bulletin boards.

On January 13, 1949, the Court of Appeals affirmed the decision of the Board (R.IV, 990-992) and its findings: (a) that the C.I.O. sought to use the closed-shop contract for the purpose of punishing the insurgents, and (b) that Colgate acceded to its discharge-demands notwithstanding Colgate knew that the union had suspended the men in reprisal for their activities in favor of the rival union. The Court succinctly stated, "The evidence abundantly supports these findings".

STATEMENT OF THE ISSUE.

The order of the Court allowing certiorari is "limited to the question of the construction of Section 8(3) of the National Labor Relations Act of 1935 in relation to this case".

SUMMARY OF ARGUMENT.

The decision and order affirmed by the Court of Appeals correctly recognizes that the *Rutland Court Doctrine* is a proper construction of the proviso to Section 8(3) of the Act. The decision and order recognizes that the *Rutland Court Doctrine* is supported by:

(1) The language, policies, and legislative history of the Act;

(2) Interpretation of the collective bargaining agreement, itself, and recognition of the limitations inherent in a closed shop contract executed within the framework of the Act;

(3) Implicit validation of the doctrine in the decision of this Court in *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248.

The decision of the Court of Appeals correctly construes the National Labor Relations Act and is in harmony with the applicable decisions of this Court.

ARGUMENT.

The fundamental question presented for decision in this instant case is whether the *Rutland Court Doctrine* correctly construes the proviso to Section 8(3) of the National Labor Relations Act of 1935 as not permitting the discharge of, or refusal to rehire, an employee, at the request of the contracting union, when, *to the employer's knowledge*, the contracting union requested the discharge, or counseled the refusal to rehire, because the

employee had engaged in rival union activities during a period when it was appropriate for employees to seek a change of bargaining representatives.

I.

THE RUTLAND COURT DOCTRINE IS A LOGICAL CONSEQUENT OF THE PURPOSE AND LANGUAGE OF THE ACT.

Whatever may have been the ultimate objectives in the enactment of the National Labor Relations Act, all are agreed that the Act was designed to attain its objectives through a formulation of policy in favor of self-organization and the creation of the right of self-organization of employees. Recognition of this dominant theme is the fundamental guide to the construction of the provisions implementing this underlying right. As stated by the Board in *Matter of Rutland Court Owners*, 44 N.L.R.B. 587 and pp. 593-594:

> "The fundamental policy of the Act, in the light of which all its provisions * * * including the proviso to Section 8(3) must be read, is to 'promote industrial peace', thereby fostering commerce, through the protection of self-organization and the encouragement of collective bargaining by representatives of the employees' own choosing. The employees' right to select representatives to be meaningful must necessarily include the right at some appropriate time to change representatives * * * Effectuation of the basic policies of the Act requires, as the life of the collective contract draws to a close, that the employees be able to advocate a change in their affiliation without fear of discharge for so doing."

And, as one commentator admirably stated, in discussing the nature and purpose of the Act:

> "Self-determination of workers and industrial democracy is its objective. The theme is first intimated in the Findings and Policy of the Act. It is announced in its full force and various phases in Section 7, where the employees are declared to have the 'right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' The various phases of worker's autonomy are reinforced and protected by the naming of various unfair labor practices. Likewise, the act provides in Section 9 for election machinery to ascertain the free choice of representatives. All contribute to the articulateness of the central idea—self-government for the workers * * *"
>
> Rosenfarb, *The National Labor Policy and How it Works*, Harper & Bros., 1940, pp. 249-250.

See also:

Teller, *Labor Disputes and Collective Bargaining*, Vol. II, Section 243, Baker, Voorhis & Co., 1940, pp. 687-688;

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937).

It is surprising, therefore, that Petitioner should wrest, from the proviso to Section 8(3), an intention to create a medium for the frustration and nullification of the fundamental right of self-organization conferred by Section 7 and protected by the provisions of Section 8(1), 9 and 10 of the Act. Indeed, Petitioner contends that Con-

gress determined to permit the coercive use of closed shop contract in perpetuity to frustrate any shift of representatives! (Petitioner's Brief p. 48.)

Petitioner reaches this startling conclusion through certain equivocal language in the legislative history indicating an intention of Congress not to interfere with state law invalidating or validating a closed shop contract. (Petitioner's Brief pp. 48-56.) Careful analysis of the language therein set forth indicates it was the intent of Congress to permit, if sanctioned by state law, the discharge of employees for non-membership in a union. One will look in vain for any indication that Congress intended to permit discharge of employees for non-membership in a union *and* the coordinate denial, on arbitrary grounds, of membership.[1]

Petitioner has also contended that Congress deliberately omitted any consideration of the problem of rival union competition for representation when the Act was drafted because "the schism in the labor movement which culminated in open warfare between the A.F.L. and C.I.O. had not occurred". From the fact that the Act antedated the C.I.O.-A.F.L. schism, Petitioner leaps to the conclusion that Congress did not foresee and anticipate the coercion of employees by labor organizations in representation proceedings. This, of course, is contrary to the fact:

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[1] "If the NLRA means . . . that a majority union may lawfully exercise congressionally granted powers so as to combine the closed shop with the closed union, Congress has by implication entered into a domain of policy-making which is very much the Supreme Court's affair, since it raises a substantial issue of due process." Note, 50 Harv. L. Rev. p. 454 (1945).

"Intra-Federation jurisdictional disputes have always plagued the A. F. of L. Large national unions, independent of the A. F. of L., did exist at the time of the enactment of the act. The I.W.W. movement in American labor is not an item in ancient history. And to be accurate, if not tactful, one must be reminded that the A. F. of L. itself saw the light of day in an era of labor schism and, in fact, constituted one branch of dual unionism, the other being the older Knights of Labor. As Senator Walsh of Massachusetts declared:

> 'If the American Federation of Labor or any other union is not honestly and sincerely and devotedly interested in the welfare of its members, we must recognize the fact that sooner or later the employees belonging to it will, in some election, move out of the American Federation of Labor and into an international union or other union of some kind, a different union of their own'. (Cong. Rec., May 16, 1935, p. 7959)."

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Recapitulating, it is apparent that the underlying principle of construction to be applied is that any component provision of the Act must accord with the principle of self-organization. That Congress intended to permit a closed shop agreement to be executed by an arbitrarily closed union was never intimated in the legislative history. Indeed, it is manifest that Congress enacted the provisions of Sections 7, 8, 9 and 10 anticipating rivalry between powerful independent unions. The *Rutland Court Doctrine*, therefore, is consonant with the legislative history, purpose and language of the Act.

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II.

THE PROVISO TO SECTION 8(3) WAS DESIGNED TO DISCLAIM A NATIONAL POLICY HOSTILE TO THE CLOSED SHOP CONTRACT AND NOT TO CREATE A MEDIUM FOR THE NULLIFICATION OF THE PRIVILEGES CONFERRED BY SECTION 7 OF THE ACT.

The conflict envisaged by the Petitioner between the proviso of Section 8(3) and the fundamental rights set forth in Section 7 of the Act is more apparent than real. Indeed, petitioner has sought to convert an expression of neutrality on the subject of closed shop contracts into a Frankenstein designed to obstruct and frustrate the representation provisions of the Act. In asserting this position, Petitioner misconstrues the proviso to Section 8(3).

As ably stated by one commentator:

> "• • • It must be borne in mind that the statutes never expressly validate the making of an agreement with a statutory representative whereby employment is conditioned on the worker's membership in that union; they simply provide that nothing in them shall invalidate the making of such an agreement which would otherwise be valid. The difference is crucial here. Blanket condemnation of such agreements as unfair labor practices is withheld; but blanket approbation is not given. If such a contract • • • though not objectionable for its discrimination • • • is used as a means to obstruct the representation provisions of the law, its legality may be questioned. In other words, nothing in the Act • • • may render illegal the making of the agreement or its normal performance, but its performance will become abnormal and illegal when used as a means of evading other provisions of the law. It is on this basis that the Na-

tional Labor Relations Board (decided Matter of Rutland Court Owners). Freedom to make a closed-shop contract does not include freedom to use that contract in such a way as to block, perhaps forever, the Board's performance of its duty to determine what union the majority wants."

Bertram Wilcox, "The Triboro Case—Mountain or Molehill", 56 *Harvard Law Rev.* 576 at pp. 594-595 (1943).

Consonant with the above analysis of the proviso to Section 8(3), the Board, in *Matter of Rutland Court Owners*, supra, at p. 594, refused to read into the proviso an intention to nullify the provisions of the Act for the determination of questions of representation:

"The legislative history shows that the proviso was merely inserted to avoid the interpretation of the Act which some had given to Section 7(a) of the National Industrial Recovery Act that closed-shop contracts were outlawed under all circumstances. Accordingly, the proviso is so worded as to protect the 'making' of closed-shop contracts if certain conditions are satisfied. By reasonable inference, the Board has held, the proviso also protects the performance of such contracts. But the mere fact that all closed shops are not unlawful, by virtue of the proviso, is no reason for holding that closed shops may be made perpetual because validly initiated pursuant to the proviso. Thus, for example, in the *Ansley Radio* case the Board confined its decision, that discharges made under a validly executed closed-shop contract did not constitute unfair labor practices, to cases where the agreement was 'for a reasonable period of time' or 'for a reasonable duration'."

The Board's interpretation of the primary legislative purpose of the proviso to Section 8(3) has since found express approval by this Court in *Algoma Plywood Co. v. Wisconsin Board*, 336 U.S. 301 at p. 306 (1949):

> "* * * Section 8(3) merely disclaims a national policy hostile to the closed shop or other forms of union-security agreement. This is the obvious inference to be drawn from the choice of words 'nothing in this Act * * * or in any other statute of the United States', and it is confirmed by the legislative history."

And, as stated by the Ninth Circuit in *Local No. 2880 v. N.L.R.B.*, 158 Fed. (2d) 365, at p. 386:

> "The Board's construction of the proviso of Subsection 8(3) with relation to Section 7 * * * as not warranting discharge for activities at an election for such choice is so obviously rational that we well could be required to accept it under the rule that upon 'questions of law the experienced judgment of the Board is entitled to great weight'. *Medo Corporation v. National Labor Relations Board*, 321 U.S. 678, 681 * * * we are of the opinion that it is the only interpretation to be given the proviso * * *"

III.

THE RUTLAND COURT DOCTRINE IS SUPPORTABLE ON ORDINARY CONTRACT AND AGENCY PRINCIPLES.

By Section 7 of the Act, the employees are granted the right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other

mutual aid or protection". It is manifest that the right to bargain collectively is a right granted to the employees and not to the representatives. The representatives, deriving their power from the employees, have a necessarily implied duty to represent the employees fairly and impartially. Counsel submits that the statutory power of a representative to make a closed shop contract necessarily implies the correlative duty to refrain from exercising the statutory power of exclusive representation to arbitrarily discriminate against employees who are not eligible to retain membership because they have exercised rights conferred by a federal statute.

Tacit recognition of this principle was announced by this Court in *Steele v. Louisville & National Railroad*, 65 Sup. Ct. 226 (1944) at p. 230. Chief Justice Stone, speaking for a majority, and faced with the arbitrary exercise of bargaining authority derived from the Railway Labor Act, stated:

> "* * * the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights * * *"

And, further, at p. 231:

> "Unless the labor union representing a craft owes some duty to represent non-union members of the craft, at least to the extent of not discriminating against them as such in the contracts which it makes as their representative, the minority would be left with no means of protecting their interests or, in-

deed, their right to earn a livelihood by pursuing the occupation in which they are employed."

Speaking of the employer's obligations, the Court significantly stated, at p. 232:

"No more is the Railroad bound by or *entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making.*" (Emphasis added.)

The arbitrary and discriminatory act of the representative in the *Steele* case resulted from refusal to equally represent Negro employees. In the instant case the arbitrary act of the representatives is in excluding employees from the union, without hearing or notice, because of their exercise of rights guaranteed by a federal statute, *and* the concurrent exclusion from employment. That the union has the right to determine eligibility of its membership is not denied. Counsel for this intervenor submits, however, that it is denied that this right may be arbitrarily exercised and coupled with a closed shop proviso to preclude members from exercising rights guaranteed them by the Act.

As stated by Professor E. Merrick Dodd in commenting upon the *Rutland Court Doctrine:*

"No doubt an employee may conduct himself in such a manner as to justify a union, despite the fact that it is his statutory bargaining representative, in insisting on his exclusion from employment as well as from union membership. But his prior affiliation with another somewhat antagonistic union ought not to be regarded as a sufficient justification for using a statutory power to represent him as a means of depriving

him of his job. The statutory right to make a closed shop contract may properly be read as subject to the limitation that such a contract cannot be availed of for that purpose."

Note:

58 *Harvard L. Rev.*, p. 454 (1945).

It is clear, likewise, that the decision in *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248, equally rested upon the principle enunciated in the *Steele v. Louisville & National Railroad* case that a bargaining representative deriving his exclusive power to represent from a federal statute may not arbitrarily exercise that power to discriminate against the employees he presumably represents. As stated in *Hunt v. Crumboch*, 325 U.S. 821 (1945), in which the Court cited the *Steele* and *Wallace* cases:

"Those cases stand for the principle that a bargaining agent owes a duty not to discriminate unfairly against any of the group it purports to represent."

Nor is this a novel principle. Courts have been quick to strike at efforts by unions to curb the civil rights of union members. Thus, Courts have nullified union limitations on the right to vote according to conscience. (*Schneider v. Local No. 60*, 116 La. 270, 40 So. 700 (1905).) And have precluded limitations on the right to petition the legislature. (*Spayd v. Ringing Rock Lodge*, 270 Pa. 67, 113 Atl. 70 (1921).) And have been equally zealous in removing limitations on the right of recourse to the judicial tribunals of the land. (*Austin v. Searing*, 16 N.Y. 112 (1857).)

If this counsel is correct in asserting that an implied constitutional limitation is imposed upon the bargaining

representative to preclude the arbitrary exercise of the power to represent, it is obvious that on ordinary contract and agency principles the employer and Petitioner in the instant case cannot rely upon the request for discharge as a defense to his discouragement of self-organization.

On familiar agency principles, the employer, having reason to believe that the agent was acting against the interest of his principles, would proceed with enforcement of the contract at his peril.

On ordinary contract principles, the employer, having knowledge that the agent was attempting to deprive the employees of rights guaranteed them by the Act, would not be entitled to enforce the contract.

See:

Rest., Contracts, sec. 602(2).

IV.

APPROVAL OF THE RUTLAND COURT DOCTRINE IS IMPLICIT IN THE DECISION OF THIS COURT IN WALLACE CORPORATION v. NLRB.

In *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248, this Court expressly affirmed the power of the Board to denominate as an unfair labor practice the discharge of certain employees pursuant to a closed shop contract when the employer had knowledge that the incumbent union's requests for discharge were based on the employees' advocacy of a rival union during prior representation proceedings. In language directly applicable to the instant proceeding, Justice Black, speaking for the majority, stated:

> "We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers. It was as much of a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with Independent as it would have been had the company done it alone."

Indeed, in the instant case there is strong evidence to indicate that the company effected the discharges at a time when the incumbent union was facing the likelihood of repudiation at the polls.[2] If it is wrong for a company to assist a union, triumphant at the polls, in ridding itself of dissidents, *a fortiori* it is wrong, in a pre-election campaign, to assist the incumbent in the ruthless elimination of a mass of employees who, in the exercise of their privilege of freedom of association, are honestly seeking, at a proper time, a change of representatives. To hold otherwise would be tantamount to a denial of any privilege of employees, at any time, to challenge effectively the majority status of the incumbent union.

Petitioner has urged that this Court's decision in the *Wallace* case applies "solely to the unfair labor practices of an employer committed through the medium of a dominated or company union".[3]

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[2]After the discharge of five plant stewards active in organization against the incumbent union *a majority of the employees* left the plant in protest (R.I, 71, 38; R.I, 257).

[3]Petition of Colgate-Palmolive-Peet Co., pages 25-26, 49-52.

This conclusion is reached by stressing the words "medium or a 'union of its own creation'" appearing in a paragraph of the decision clearly designed to indicate that the company could not accomplish by indirection that which it could not do directly.

The contention completely overlooks the fact that the Board had adopted the principle of refusing to inquire into charges of company domination after a settlement, unless there had been a subsequent unfair labor practice. The Board found there had been a subsequent unfair labor practice in the discharge of the C.I.O. adherents.

As stated by one commentator:

> "Despite the uncertainty as to the scope of the decision brought about by the use of the words 'union of its own creation' it is probably safe to assume that the learned Justice and those who concurred in his opinion would sustain the Board's view that it made no difference whether the union at whose behest the employer acted was or was not company-dominated or assisted."
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> E. Merrick Dodd, "The Supreme Court and Organized Labor, 1941-1945", 48 *Harvard Law Review*, 1018 at p. 1039 (1945).

Dated, San Francisco, California,
November 9, 1949.

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